APPENDIX 1

The Planning Inspectorate

Appeal Decisions

Site visit made on 11 July 2011

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 July 2011

Appeal Ref: APP/D1780/C/11/2148700 & 2148701
Land at 45 The Parkway, Southampton SO16 3PD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr P S Sidhu and Mrs N Kaur against an enforcement notice issued by Southampton City Council.
- The Council's reference is 11/00011/APENF.
- The notice was issued on 18 February 2011.
- The breach of planning control as alleged in the notice is without planning permission (1) the construction of a brick built, single storey outbuilding and (2) associated engineering operations including importation of fill and land raising to enable the construction of steps and 2 terraces to facilitate access to and support of the outbuilding.
- The requirements of the notice are (i) remove the part built single storey outbuilding and associated steps and terraces and (ii) remove from the land all building materials and rubble arising from compliance with requirement (i) and restore the land to its previous levels and condition.
- The period for compliance with the requirements is 56 days.
- The appeal is proceeding on the grounds set out in section 174(2((c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Decision

1. The enforcement notice is corrected by deletion of "importation of fill and land raising to enable" from Section 3(2). Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Reasons

Ground (c)

2. The Town and Country Planning Act 1990, Section 55(1) notes that "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land. Some operations in a garden, such as the forming of a hard standing may be permitted, and some operations such as some moving of soil for gardening operations may be considered as being de minimis and not development. However, it is apparent, by comparing the garden as it is now with the estate agents photographs showing the previous arrangement, that the whole of the lower tier of the garden has been removed across the width of the garden, and the second tier appears to have been lowered and leveled. In addition, large retaining walls have been built to the sides of the garden and at the new change in level, with the outbuilding

constructed directly off part of it. A neighbour notes in representations that a substantial amount of soil was removed during the works.

3. I do not consider that the removal of such substantial amounts of soil and formation of large retaining walls could be considered de minimis or come within any definition of permitted development, but can reasonably be defined as engineering works for which planning permission is necessary. I also do not consider that this was simply replacing existing dilapidated retaining walls as some of the original walls have been removed and others replaced by new walls considerably increased in height. Looking at the outbuilding, I accept that by comparing the new second tier garden level (where the outbuilding is built) with the garden levels of the properties on either side, that this indicates the second tier level is about 450mm lower than that of the surrounding gardens. I therefore accept that the original garden level here would have likely to have been about 450mm higher than it is now. The allegation refers to importation of fill and land, but the visual evidence at the site visit and observations of the neighbour indicate that soil was removed, not imported. I shall correct the second part of the allegation to reflect this situation.

4. Therefore, the height of the outbuilding by comparison with the original garden level would be well within the maximum permitted of 2.5m; in fact it is less than 2.5m above the new lower level that has been formed and below the garden fence level. I accept that the garden building, if it had been built in a similar position without the associated and ancillary engineering works, would have been likely to comply with the various requirements for permitted development. However, the outbuilding is part and parcel with the engineering works. To reinstate the unauthorised engineering works that have occurred will require the removal of the outbuilding.

5. I accept the appellants' argument in relation to the potential for the outbuilding being permitted development in relation to the original ground level, and in fact when the ground levels are reinstated the outbuilding could be higher up than it is. However, that does not mean that what has been built does not require planning permission, because overall with the integral engineering works it is not permitted development. There is no appeal under ground (a) to consider what has been built in relation to the potential fall back position, or under ground (f) to consider lesser steps. I therefore conclude that overall the works that have been completed do require planning permission and the appeal on ground (c) fails.

6. For the reasons given above I consider that the appeal should not succeed.

Graham Dudley