
Appeal Decisions

Site visit made on 5 July 2016

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 8 July 2016

Appeal A Ref: APP/N1025/C/16/3148564

Appeal B Ref: APP/N1025/C/16/3148565

Land adjoining The Cottage, Wilne Road, Draycott, Derbyshire DE72 3QH

- 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 appeals are made by Mr Simon Walters (Appeal A) and Mrs Eleanor Walters (Appeal B) against an enforcement notice issued by Erewash Borough Council.
 - The Council's reference is ENF/095720.
 - The notice was issued on 08 March 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land from agriculture to a residential use.
 - The requirements of the notice are: (i) Cease the use of the Land for residential purposes; (ii) Remove the close boarded timber fence, concrete gravel boards and concrete posts from the southwest, northwest and northeast boundaries of the Land; (iii) Remove the timber decking, the gravelled areas (including the black matting and timber surrounds), the paving slabs, plastic chairs, timber pallets, plastic storage containers/compost bins, lengths of timber, plastic sheets, plastic water butt, the timber hutches, the timber chicken shed, the dog kennel (including its concrete base and metal enclosure) and the timber shed (including its concrete base) from the Land; (iv) Plant a hedge along the southeast boundary of the Land between point A and point B as shown on the plan attached to this Notice and retain a hedge along this boundary in perpetuity.
 - The period for compliance with the requirements is two months after the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the applications for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.
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Decisions

1. Appeals A and B are allowed on ground (f), and the enforcement notice is varied by the deletion of paragraph (iv) from section 5. Subject to that variation the enforcement notice is upheld.

The Appeals on Ground (f)

2. An appeal on ground (f) is made on the basis that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which may have been caused by the breach. In this case, it is clear, from the requirements of the notice and the reasons for serving it, that the Council is seeking to remedy the breach of planning control and not simply to remedy any injury to amenity.
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3. Four steps are required to comply with the notice and the appeal is made in relation to the second and fourth requirements. The appellants accept that the use of the land for residential purposes should cease and no appeal on ground (a) has been submitted to request that planning permission should be granted for what is alleged in the notice. In addition, there is no appeal against the requirement to remove the timber decking, gravelled areas, paving slabs, kennels, hutches and other domestic paraphernalia. At the time of my site visit, those items had already been moved into the garden at the rear of the dwelling.
4. The appellants contend that the removal of the timber fencing surrounding the paddock would be unnecessary and perverse on the basis that, if the fence were removed, an identical fence could be erected under permitted development rights granted by Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015. The Council do not dispute that point but consider that the fence forms an integral part of the change of use, giving the land a domestic, suburban, appearance that is at odds with the rural setting. With reference to established case law the Council note that the courts have held that an enforcement notice directed at a change of use may require the removal of works that are integral to facilitating the unauthorised use, even if such works on their own may not constitute development or be 'permitted development' such that they would be immune from enforcement action¹.
5. In my view it is clear that the function of the fence is to segregate the remainder of the paddock from the domestic area associated with the dwelling. As noted by the appellants, it helps to prevent children and domestic pets from straying onto the field beyond the dwelling. The appearance and design is clearly of a residential nature and, whilst permitted development rights may exist for the erection of fences, it is not the type of boundary enclosure that would normally be associated with an agricultural use. It has an entirely suburban character and is designed to enclose the space around the dwelling. Consequently, in my view, the fence is ancillary operational development that helped to facilitate the unlawful change of use from agricultural to residential use. In other words, having regard to the tests laid down in the relevant case law, the fence is part and parcel of the breach and is integral to it. If the fence were left in place in its current form the character of the land enclosed would remain closely associated with the dwelling and cut off from the paddock beyond.
6. For those reasons I consider that the fence was erected to facilitate the change of use and that it represents ancillary operational development that is part and parcel of the breach. As such, its removal would not go beyond what is necessary to remedy the breach.
7. The line marked A to B on the plan marks the lawful extent of the garden on the north-west boundary. There is some dispute as to whether a hedgerow was ever in place along that boundary. The photograph provided by the Council clearly depicts a substantial amount of vegetation within the vicinity but the appellants maintain that this was a number of trees which overhung the boundary as opposed to a more compact hedgerow. A post and rail fence is in place between points A and B and the appellants suggest that this was in

¹ Murfitt v SSE (1980) JPL 598 & Somak Travel v SSE (1987) JPL 630

place when they purchased the house. I have no reason to doubt that point. That fence clearly delineates the garden from the land beyond and the requirement to plant a hedge would simply amount to a different form of boundary treatment to that which exists at present. In other words, if no hedge were planted, the garden of the house would be clearly segregated from the agricultural land beyond. Therefore, to my mind, the requirement to plant a hedge would not be necessary to remedy the breach of planning control; ceasing use of the land, removing the associated fencing and domestic paraphernalia would suffice in meeting that objective.

8. Therefore, in that regard, I conclude that the requirements of the notice are excessive and I shall vary the enforcement notice accordingly, prior to upholding it. The appeals under ground (f) succeed to that extent.

Chris Preston

INSPECTOR