

Appeal Decision

Site visit made on 1 June 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 12 July 2016

Appeal Ref: APP/Y3615/C/16/3145911

**Land to the west of Seagry, White Hart Lane, Wood Street Village,
Guildford GU3 3DZ**

- 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 S Brazil against an enforcement notice issued by Guildford Borough Council.
 - The notice was issued on 3 February 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of metal gates and posts over one metre in height adjacent to a highway.
 - The requirements of the notice are:
 - (i) Remove the metal entrance gates and posts.
 - (ii) Remove from the land all materials and debris resulting from step (i).
 - The period for compliance with the requirements is two months.
 - 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 appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Summary Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matter

1. There is a minor discrepancy between the allegation in the notice and the requirements, insofar as the latter includes the word 'entrance' in describing the gates. I am satisfied that this does not alter the meaning of the notice and that the appellant understands the requirements of the notice. I therefore see no reason to correct the notice.

The appeal on ground (c)

2. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control.
 3. The essence of the appellant's ground of appeal is that the entrance gates and posts are set back from the highway, with an intervening strip of land in the ownership of the appellant between the gates and the highway. The entrance gates and posts do not exceed two metres in height. The appellant contends that the entrance gates and posts are not adjacent to a highway and, given their height, therefore constitute permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
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4. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted by Class A, Part 2, Schedule 2 of the GPDO, subject to the limitations set out at Class A.1. The latter provides that the erection of a gate, fence, wall or other means of enclosure is permitted development unless:

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after carrying out the development, exceed-

(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;
(ii) in any other case, 1 metre above ground level;

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed whichever is the greater.

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding a listed building.
5. The appeal site is not within the curtilage of a listed building and therefore the limitation at A.1 (d) is not relevant in this case. The appellant does not claim that the gates are an improvement or alteration of existing gates, such that the limitation at A.1 (c) is also of no relevance. The site is not a school and therefore the limitation at A.1 (a)(i) is not relevant. The entrance gates and posts therefore fall to be considered against the limitations set out in A.1(a)(ii) and (b).
6. The Council explain, at the time that the enforcement notice was issued, the height of the gates and posts as erected was 2.5 metres but have subsequently been lowered to 1.87 metres. The latter was the case at the time of my site visit and I have no documentary evidence before me to indicate that the height of the entrance gates at the time that the enforcement notice was issued was that of 2.5 metres as alleged by the Council. However, in the light of my findings below, that is academic and I do not need to reach a conclusion on that point.
7. The main issue in dispute is whether the entrance gates and posts are 'adjacent' to the highway for the purposes of Class A.1, Part 2, Schedule 2 of the GPDO. Although there is no definition of 'adjacent' in the GPDO, the Oxford English Dictionary defines 'adjacent' as "near or next to something else". There is nothing in that definition or in relevant case law that requires the gate, wall or fence to touch the highway in order for it to be considered as being adjacent¹. Consequently, provided that the gate, wall or fence has the perceived function of forming a boundary between the highway and the land to

¹ Simmonds v Secretary of State for the Environment and Rochdale MDC [1981] J.P.L. 191

which it relates, in my view there is no reason in principle why it could not be set some distance back from a highway and still be considered to adjacent to it.

8. In this case the highway concerned is White Hart lane, a classified road over which the public can pass and re-pass using vehicles. The entrance gates are set back some 2.5 metres from that highway. These gates form a boundary between the highway and the land behind. Although, as I understand it, the strip of land between the gates and the highway is owned by the appellant, this intervening strip of land is flat with little vegetation upon it and provides the vehicular access to the land. Consequently, there is nothing of substance between the highway and the entrance gates and posts.
9. Having regard to the proximity of the entrance gates and posts to the highway and the lack of any intervening structures or vegetation, I consider that the entrance gates and posts are both near to and next to the highway. I therefore conclude that, as a matter of fact and degree, the entrance gates and posts are adjacent to the highway that is used by vehicular traffic. Consequently, irrespective of whether the entrance gates are assessed against criteria (a)(ii) or (b) of Class A.1, Part 2, Schedule 2 of the GPDO, they exceed the maximum heights stipulated there. It follows that the metal entrance gates and posts alleged in the notice do not constitute permitted development under Class A, Part 2, Schedule 2 of the GPDO.
10. Accordingly, the appeal on ground (c) fails.

Conclusion

11. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

12. The appeal is dismissed and the enforcement notice is upheld.

Paul Freer

INSPECTOR