
Appeal Decisions

Accompanied site visit made on 26 October 2016

by Felix Bourne BA(Hons) LARTPI Solicitor

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

Decision date: 11 November 2016

Appeal refs: APP/C1570/C/16/3148889 & 90

Tara, Dunmow Road, Felsted, Dunmow, Essex, CM6 3LD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Uttlesford District Council.
- The appeals are made by Mr Robert Weston (3148889) and Ms Tatiana Unyamina-Tsingel.
- The notice was issued on 22 March 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of brick piers, brick walls, railings and gates (marked in blue of the plan attached to the Notice) which together are more than 1 metre in height and are adjacent to the highway.
- The requirements of the notice are as follows: (a) Remove the brick piers, brick walls, railings and gates from the Land in the area marked in blue on the plan attached to the Notice. (b) Remove the resulting rubble from the Land. OR (c) reduce the height of the brick piers, the railings together with the brick walls and the gates (in the area marked blue on the plan attached to the Notice) to a height not exceeding 1 metre. (d) Remove the resulting rubble and debris from the Land
- The period for compliance with the requirements is six weeks.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeals on ground (c) are dismissed. However, the appeals on ground (a) are allowed and conditional planning permission is granted. The enforcement notice is quashed.

Preliminary matters

1. I shall consider first the appeals on ground (c) before turning, as necessary and in turn, to the appeals on ground (a), (f) and (g).

The appeals on ground (c)

2. Ground (c) is the relevant ground of appeal where an appellant wishes to contend that the matters alleged in the Notice do not constitute a breach of planning control. It is one of what are termed the 'legal' grounds of appeal against an enforcement notice. With such grounds of appeal the burden of proof lies with the appellant to make out his or her case, the relevant test of the evidence being the balance of probability.

3. Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO) grants planning permission for the classes of development described as permitted development in Schedule 2. In Part 2 of Schedule 2, Minor Operations, Class A permits the erection, construction, maintenance or alteration of a gate, fence, wall or other means of enclosure. There are limitations, as set out in A.1, when development is not permitted. Relevant to this appeal, the height of the gate, fence, wall or other means of enclosure, after the carrying out of the development, must not exceed one metre above ground level if erected adjacent to a highway used by vehicular traffic or, in the case of any other gate, fence, wall, or other means of enclosure, two metres.
4. 'Adjacent to' is not defined in the GPDO: however, following case law, it is generally accepted that a means of enclosure does not have to actually touch the edge of the highway to be considered adjacent. From the site inspection there appears to be some doubt as to the extent of the highway. It seems likely that the highway at least extends to the rear of the footway that runs past the property. If that were the extent of the highway the nearest point of the development would be around 1.85 metres away from the highway on the western side of the gates, and a little over two metres away on the eastern side. However, there was also a telegraph pole in the vicinity of the eastern side and this was around half a metre behind the footway. If this was erected on highway land, and I have no evidence to suggest otherwise, it would mean that the highway extends across at least part of the grass verge and is therefore even closer to the development.
5. The argument is made that the central gates are self-supporting and that, because of their distance from the highway, they cannot be appropriately viewed as being adjacent to the highway. To take such a stance does not materially assist the appellants, for this part of the development is up to 3.3 metres in height and could not therefore constitute 'permitted development'. However, it is in any event clear from drawing no. WH67/15/10/110, titled 'Entrance gates', which though not accurate in every detail gives a fair representation of what has been built, that the development is conceived as a whole. Importantly, it is also seen as a whole. It should therefore be treated as a single operation and attempts to sub-divide it up into separate elements, some of which, if considered on their own, might constitute 'permitted development', are artificial.
6. I do not consider it safe to assume that in other cases where the Council have not granted planning permission but, on the other hand, have not taken enforcement action, it is because the Council accepted that the development was 'permitted development'. It may be that the Council were unaware of the development, or that enforcement action may be taken in the future, if the development is still susceptible to this. In any event, enforcement action is discretionary.
7. In the light of the above I conclude that the appellants have failed to prove that, on the balance of probability, the matters alleged by the Notice do not constitute a breach of planning control and the appeals on ground (c) must therefore fail.

The appeals on ground (a) and the deemed applications

8. The main issue is the effect of the development on the character and appearance of the area.
9. The appeal site lies on the northern side of the B1256 Dunmow Road, and on the western edge of the hamlet of Blake End. It accommodates a sizeable dwelling, to which the development subject of appeal provides an entrance. However, it is located in an area designated as Countryside in the Uttlesford Local Plan 2005, within which Policies S7 and GEN2 are of relevance. Policy S7 states that any development located in the Countryside should be necessary and protect and enhance the character of the location, whilst Policy GEN2 provides that development should be of a compatible scale, form, appearance and materials of the existing development within the surrounding locality and safeguard natural environmental features.
10. The appeal site is on the edge of a small settlement: however, it does appear as part of the countryside and, whilst the appellants have drawn my attention to various other developments which they consider to be comparable, each case must be considered on its own merits. From my inspection of the site and its surroundings, I consider that, at present, the development subject of the appeal has a somewhat stark appearance and an urbanising effect on the area, which is harmful to its character and appearance.
11. I appreciate that the appellants may be concerned about security: however, if that is so, it seems counterproductive to draw attention to their property in the manner which the development could presently be considered to do. On the other hand, some form of entrance could reasonably be viewed as necessary and, whilst the appearance of the existing development is presently harmful, there are elements which are compatible with the existing house.
12. I note that the Council do not suggest any conditions in the event of planning permission being granted for the development. However, the appellants' agent, in setting out the Grounds of Appeal, refers to the scope for generous landscaping in front of the walls and railings. Hedges can create effective secure barriers as well as decorative ones. To what extent planting in front of the walls would be feasible would depend on where the edge of the highway was found to lie but in any event there would be scope for landscaping behind the wall and railings. Whilst this would leave the walls and pillars open to full view, the former are in any event low, and planting a hedge behind the railings could still do much to soften the appearance of the development and assist in assimilating the development into its largely rural surroundings, giving it the more natural appearance that is needed in this sensitive location. It would then be consistent with the relevant Development Plan policies and would not have a harmful effect on the character and appearance of the area.
13. Permission will therefore be granted, including in relation to the deemed applications, but in each case subject to a condition in this regard. The appeals on ground (a) therefore succeed, rendering it unnecessary to consider the appeals on grounds (f) and (g).

Formal decisions

14. The appeals on ground (c) are dismissed but those on ground (a) are allowed and planning permission is granted, including in relation to the applications deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of brick walls, railings and gates (marked in blue on the plan attached to the enforcement notice)(together referred to as 'the development') at Tara, Dunmow Road, Felsted, Dunmow, Essex, M6 3LD, in each case subject to the following condition:

- (1) The development subject of this permission shall be removed, and the site restored to its condition prior to the development taking place, within six months of the failure to meet any of the following requirements:
 - (a) Within two months of the date of this permission full details of a scheme of landscaping shall be submitted in writing to the local planning authority. These shall include details of hedges to be planted alongside the railings, including species and precise position, together with a timetable for implementation, and provision for the replacement of any planting that dies, or becomes diseased. Details shall also set out proposals for the subsequent maintenance of the hedges, including maximum and minimum heights.
 - (b) Within five months of the date of this permission, the submitted scheme shall have been approved by the local planning authority (the approved scheme) or, if the local planning authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as valid by, the Secretary of State.
 - (c) If an appeal is made pursuant to (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - (d) The approved scheme shall have been implemented in accordance with the approved timetable.

15. The enforcement notice is quashed.

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INSPECTOR