
Appeal Decisions

Site visit made on 5 September 2016

by Melissa Hall BA (Hons), BTP, MSc, MRTPI

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

Decision date: 15 November 2016

Appeal A: APP/V3310/C/16/3148543

Appeal B: APP/V3310/C/16/3148544

Land at 20 Kings Walk, Bridgwater, Somerset TA6 4FR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - **Appeal A** is made by Miss Samantha Grabham and **Appeal B** is made by Mr Martin Beaney against an enforcement notice issued by Sedgemoor District Council.
 - The Council's reference is E09/131.
 - The notice was issued on 1 April 2016.
 - The breach of planning control as alleged in the notice is '*Without planning permission, erection of fence to increase curtilage at 20 Kings Walk, Bridgwater*'.
 - The requirements of the notice are:
 1. *Re-site the fence back to its original position shown on attached plan.*
 2. *Remove any hardstandings (if there is any laid within the extended curtilage) or domestic paraphernalia from the area hatched in black on the attached plan.*
 3. *If required re-seed the area hatched in black on the attached plan with grass seed.*
 - The period for compliance with the requirements is 2 months after the Notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(a),(c) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. The Enforcement Notice ("the EN") is corrected by:

The deletion of requirement 2 to '*Remove any hardstandings (if there is any laid within the extended curtilage) or domestic paraphernalia from the area hatched in black on the attached plan*' and requirement 3 which reads '*If required re-seed the area hatched in black on the attached plan with grass seed*'.

Subject to these corrections, I allow the appeals and direct that the Enforcement Notice be quashed.

Procedural Matters

2. Two appeals were made against the same EN; one by Miss Samantha Grabham and the other by Mr Martin Beaney of the same address. As only one prescribed fee has been paid in respect of the ground (a) appeal, Appeal A will proceed on the basis of grounds (a), (c) and (g) whilst Appeal B will continue on grounds (c) and (g) only. I have dealt with both appeals together, except where otherwise indicated.
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3. The Council has served an Enforcement Notice (EN) in relation to operational development consisting of the erection of a fence rather than a material change of use of the land to increase the garden area. Neither has the Council served a breach of condition notice despite alleging that the re-sited fence is not in compliance with Condition 45 of planning permission Ref 09/08/00017¹. I have therefore considered the appeals on the basis of the operational development only.

The EN

4. I have a duty to correct an EN that is defective, provided it would not cause injustice to any party². The EN includes the requirement to remove any hardstanding or domestic paraphernalia from the hatched area shown on the plan that accompanied the EN and to re-seed the same area of land. However, there is no evidence of any hardstanding and an EN cannot require remedial action for works that are yet to occur. Furthermore, the 'domestic paraphernalia' relates to the use of the land rather than the operational development the EN attacks. I therefore consider such requirement to be excessive. I shall correct the EN by omitting these requirements. I do not consider that any party would be prejudiced by this correction.

The ground (c) appeals

5. The appeals on ground (c) are that there has not been a breach of planning control.
6. The appellants state that the height, design and materials of the fence have not been changed from that which existed previously; rather, the original panels have been used in the construction of the re-located fence. The appellants also contend that they were advised by the Council that planning permission would not be required for the works as the fence would not be within 2 metres of a public highway.
7. Be that as it may, the Council has stated that Condition 45 of planning permission Ref 09/08/00017 requires that '*Before the Phase 1 residential development hereby permitted is commenced, apart from specific operations to be approved in advance in writing by the local planning authority, plans to show the method of enclosure for the curtilage of all dwellings shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before any dwelling to which it relates is occupied and any subsequent amendments that shall be agreed in writing with the local planning authority*'.
8. Having regard to this condition, the Council asserts that any boundary treatment not originally approved or implemented in accordance with Condition 45 would require its written approval and that this condition removes permitted development rights relating to means of enclosure³.

¹ Outline planning permission for residential development of up to 2,000 dwellings, a commercial services centre, employment development, sui generis trade units and car showrooms, sports and recreation facilities, strategic landscaping, transport network and access connections, associated engineering works, infrastructure, drainage, and car parking, and including detailed drawings for 75,000 square metres of B8 uses and Phase 1 residential development granted on 2 July 2010.

² Section 176(1)(a) of the Act.

³ Class A of Part 2 to Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015.

9. The Council confirms that the original fence was constructed in accordance with a scheme that was submitted and approved in writing by the local planning authority before the dwelling to which the fence the subject of the appeals relates (No 20) was occupied. It is thus satisfied that the first part of Condition 45 was complied with. However, it alleges that the re-siting of the fence is contrary to the requirements of the second part of the condition which requires that change to be agreed in writing by the local planning authority. That is, the action carried out by the appellant constitutes a '*subsequent amendment*' to the approved scheme and as such needs written approval from the local planning authority. It adds that the condition should be read as a whole and one superfluous addition of the word '*that*' in the last sentence, does not affect the premise of the condition.
10. However, the appellants read the requirements of Condition 45 differently insofar as they consider that the details of the boundary treatment and any subsequent changes to these details would need approval from the Council prior to the occupation of the dwelling. It was the appellants understanding that the requirements of the condition were no longer in effect after the initial scheme had been agreed and implemented, and that the fence could therefore be re-sited under permitted development rights.
11. I do not dispute that the condition may be intended to withdraw permitted development rights. However, I cannot agree that its wording imposes a clear, ongoing requirement to seek approval for any changes in perpetuity or that it withdraws permitted development rights in relation to means of enclosure.
12. In agreeing and implementing a boundary treatment prior to the occupation of the dwelling, I consider that the provisions of Condition 45 have been satisfied. Whilst I accept that '*subsequent amendments*' are to be agreed, the condition is not clear as to whether this relates to subsequent amendments prior to, or post, occupation of the dwellings to which it relates. Furthermore, there is no requirement to retain the boundary treatment once erected. Neither is there any reference to the permitted development rights in the condition that the Council claims it withdraws nor any suggestion in the reason that such a course of action is exceptionally justified to prevent a serious adverse effect on amenity; the reason for the condition merely states '*in the interests of the amenities of the locality*'.
13. In my opinion, the condition lacks precision and clarity in terms of when it comes into effect and whether it imposes an ongoing requirement to seek approval for any change to the position of the fence after the initial scheme has been agreed. It is thus not possible to interpret its straightforward meaning given its ambiguous construction. Neither does it explicitly state that permitted development rights are withdrawn, leaving the reader with a reasonable expectation that permitted development rights can be exercised.
14. Hence the condition fails the tests outlined in the National Planning Policy Framework and the National Planning Practice Guidance insofar as it is not sufficiently precise.
15. In this context, I do not conclude that the re-siting of the fence represents a breach of planning control. The appeals on ground (c) therefore succeed.

Conclusions

16. For the reasons given above, I conclude that the appeals should succeed on ground (c). The ground (a) appeal / deemed planning application in Appeal A and the ground (g) appeal in Appeals A & B need not therefore be considered.

Melissa Hall

Inspector