
Appeal Decision

Site visit made on 21 November 2016

by Thomas Shields MA DipURP MRTPI

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

Decision date: 12 December 2016

Appeal Ref: APP/E3715/C/16/3159593 and 3159594
Highview, Withybrook Lane, Shilton, CV7 9HY

- The appeals are 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 Ian Townsend and Mrs Julie Townsend against an enforcement notice issued by Rugby Borough Council.
 - The enforcement notice was issued on 31 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a wall and gates exceeding 1 metre and abutting the highway.
 - The requirements of the notice are:
 - i. Reduce the gates and wall to a height of 1 metre, or
 - ii. Remove the gates and wall and return the land to its former condition
 - The period for compliance with the requirements is 28 days.
 - Both appeals are proceeding on the grounds set out in section 174(2) (c) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Appeal 3159593 is also proceeding on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.
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Decision

1. The enforcement notice is quashed.

Reasons

2. Section 173(10) of the Act states that '*An enforcement notice shall specify such additional matters as may be prescribed*'. The *additional matters* referred to are set out in the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 ("the ENAR").
3. Regulation 4(b) of the ENAR states that a notice shall specify all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice.
4. It is possible in some cases that a Council considers that the development subject of the enforcement notice does not conflict with any policies. However, where there are such policies it is important that the notice specifies them in accordance with the statutory s173(10) and Regulation 4(b) requirement. Apart from anything else, it allows developers to understand in respect of a potential ground (a) appeal what the conflict with the development plan is, on what grounds and matters they might seek to argue an appeal, and how that conflict might be overcome, for example by way of revised plans or planning conditions. Alternatively, it could lead them to conclude not to pursue an appeal on planning merits.

5. The notice subject of this appeal sets out at Section 4 the Council's reasons for issue. It states; first, that the breach of planning control has occurred within the last 4 years, and second, that the development is not 'permitted development'. In essence it says nothing more than the development is a breach of planning control. There is no reference to any development plan policies, nor any reasons at all as to why the Council considers the development is objectionable in planning terms. I raised this issue with the Council.
6. In response¹ the Council considered that there would be no injustice to the appellant in respect of the ground (a) appeal if I were to correct the notice by inserting at Section 4 the following reason: "*The wall and gates have a detrimental impact on the visual amenity and character of the area, countryside and Green Belt contrary to policy CS16 of the Rugby Borough Core Strategy 2011 and the National Planning Policy Framework 2012*".
7. I disagree that correcting the notice, as suggested, would not result in injustice for the following reasons.
8. The ground (a) appeal and supporting arguments therein are based on the notice as drafted. In terms of planning merits, the appellant's 'key reason' as to why planning permission ought to be granted related solely to the design of the wall and gates being entirely in keeping with the design rationale of the host property, Highview. The proposed finishing treatment of render and capping was also argued solely on the appellant's consideration of the contextual relationship of the wall and gates with the host building. The appeal therefore was clearly made on the basis of much narrower considerations than the Council's, with no justification advanced by the appellant with regard to the effect on the wider area, the countryside, the Green Belt, or in respect of Policy CS16. That is not surprising given that the notice did not refer to them. No further statement was submitted by the appellant, hence the appeal relies on the grounds of appeal as originally submitted and as I have described.
9. Consequently, to correct the notice by inserting the Council's suggested new reason would significantly alter the notice in a way which the appellant has not had the opportunity to respond, thereby resulting in a significant disadvantage.

Conclusion

10. For the reasons given above I conclude that the notice is defective because it does not satisfy the requirement of Regulation 4(b) of the ENAR and thereby s173(10) of the Act. It is not open to me to correct the notice in accordance with my powers under s176(1)(a) of the Act since injustice would be caused were I to do so. Consequently, the notice is invalid and I will quash the notice. In these circumstances the appeals under grounds (a), (c) and (g) as set out in s174(2) and the application for planning permission deemed to have been made under s177(5) of the Act do not fall to be considered.

Thomas Shields

INSPECTOR

¹ Council's email response 24.11.16