

Appeal Decisions

Site visit made on 10 January 2017

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 20 January 2017

Notice A: Appeal Ref: APP/R0335/C/16/3155619 57 High Street, Sandhurst, Berkshire GU47 8HB

- 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 & Mrs G Anderson against an enforcement notice issued by Bracknell Forest Borough Council.
 - The enforcement notice was issued on 1 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a single storey semi-detached building following the demolition of the previous vacant building.
 - The requirements of the notice are:
 - i) Demolish the building on the land to which the notice relates shown in the approximate location of the area shaded in blue.
 - ii) Break up any foundations or hardstanding on the land to which the notice relates.
 - iii) Cease the use of the building and the land to which the notice relates shown outlined in blue as a dog grooming parlour.
 - iv) Make good the wall of 55 High Street, Sandhurst GU47 8HB which currently forms a party wall with the land to which the notice relates.
 - v) Remove from the land to which the notice relates all materials and rubble resulting from compliance with steps (i) to (iv) above.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Notice B: Appeal Ref: APP/R0335/C/16/3155622 57 High Street, Sandhurst, Berkshire GU47 8HB

- 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 & Mrs G Anderson against an enforcement notice issued by Bracknell Forest Borough Council.
 - The enforcement notice was issued on 1 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised use of the building as a dog grooming parlour (Sui Generis use) following the erection of a single storey semi-detached building.
 - The requirements of the notice are:
 - i) Cease the use of the building and the land to which the notice relates shown outlined in blue as a dog grooming parlour.
 - ii) Demolish the building on the land to which the notice relates shown in the approximate location of the area shaded in blue.
 - iii) Break up any foundations or hardstanding on the land to which the notice relates.
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- iv) Make good the wall of 55 High Street, Sandhurst GU47 8HB which currently forms a party wall with the land to which the notice relates.
 - v) Remove from the land to which the notice relates all materials and rubble resulting from compliance with steps (i) to (iv) above.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Notice A: Appeal Ref: APP/R0335/C/16/3155619

1. The appeal is allowed on ground (g), and the enforcement notice is varied: by the deletion of two months and the substitution of nine months as the period for compliance. Subject to these variations the enforcement notice is upheld.

Notice B: Appeal Ref: APP/R0335/C/16/3155622

2. I direct that the enforcement notice is quashed.

Preliminary matters

3. Notice A alleges, in effect, the unauthorised erection of a building. Notice B attacks not the erection of the building but its use. The use of a building or land is not, in itself, development requiring planning permission; that is a material change of use. They were issued on the same day but not, as far as I am aware, in the alternative. However, if notice A is upheld and the requirements confirmed, notice B serves no practical purpose since the building would not exist.
4. As noted in the summary details above, there is no appeal on ground (a) in respect of notice A.

Notice A: the appeal on ground (b)

5. The gist of the appellant's case on this ground of appeal is that the previous building was not razed to the ground and that the demolition alleged did not occur as a matter of fact. The notice is therefore null and void.
6. The essence of the Council's case is not that the whole building was demolished. Rather, it is that it was substantially demolished and replaced with the current structure which is materially different in appearance.
7. It is not clear to me why the Council felt it necessary to include 'following the demolition of the previous vacant building' in the breach of planning control alleged when it is quite clear that the development attacked is 'the erection of a single storey semi-detached building'.
8. The appellant does not dispute that significant works to the building were carried out. It is also accepted that these are works that fall within the definition of "building operations" set out in s55(1A) of the principal Act. In view of this concession, the extent of the demolition and rebuilding and therefore the accuracy of the description of the breach seems to be less important than the failure to obtain planning permission for the works carried out.

9. Such planning permission would have only been unnecessary if the works carried out (a) affected only the interior of the building or (b) did not materially affect the external appearance of the building. The first of these cannot apply on the appellant's own evidence. The issue therefore is whether or not there has been a material effect on the external appearance of the building and therefore whether or not development requiring planning permission has taken place. That is properly an appeal on ground (c) and that is the basis on which I shall also deal with this ground of appeal.
10. There appears to be no dispute that the building that exists today is on the same footprint as the previous building. It is also apparent from photographs submitted in evidence that the current building is of the same basic design as its predecessor, namely a small part gable roof, part flat roof building with a shop front.
11. In my view, the appellant's evidence about exactly what works have taken place is inconsistent. What appears to be certain is that the structure of the gable roof was replaced entirely and tiled or slated (it appeared to be slates); the covering on the rear, flat roof was replaced; and the whole shop front was replaced with one of a different design.
12. There is less clarity about the works carried out on the gable end wall. In letters to the Council prior to the issue of the notice (one of which was in response to a Planning Contravention Notice) it is stated that some walls became unstable when replacing damaged windows and therefore were rebuilt. In a letter dated 5 May 2016 this was said to include the gable end wall. In the original grounds of appeal and again in the appeal statement it is said that '...window frames were replaced and, where necessary, the walls around these were made good'. At final comments stage it is said that 'the gable end-which was structurally unsound-was rebuilt in precisely the same plane as existed.' It is implied with the aid of a photograph that this applied only to the external wall while the internal wall remained.
13. The Council relies on its interpretation of images of the building in April 2009, July 2009 and March 2011 (the Streetview photos), the report of the building control officer who visited the site and inspected the works taking place and photographs taken on 27 November 2014 (the 2014 photos) while work was in progress.
14. On this point my site visit was of little assistance since the external walls were rendered and painted and the internal walls were smooth-plastered and also painted. However, the extent of the block work on the gable wall that can clearly be seen in the 2014 photos leads me to conclude on the balance of probability that the whole of that wall, if not the entire side elevation was rebuilt.
15. On that basis, the whole of the gable roof, the whole of the shop front and the whole of the gable-end wall of the previous building has been taken down and replaced by the roof and walls that are visible today. Moreover, comparing the current building with the previous building shown in the Streetview photos confirms that the new building has a materially different external appearance. The shop front is a different design as is the fenestration in the side, gable end elevation.

16. The rebuilding works undertaken therefore are development for which planning permission is required. No such planning permission exists. The appeal on ground (c) that I have considered therefore fails.
17. The rebuilding works are so substantial that, as a matter of fact and degree judgement, I consider them to have resulted in the erection of a new building. I note the comments of the neighbour on this point but these do not alter my conclusion. The appeal on ground (b) therefore fails also. Whether the works amount to total or partial demolition is not material to that conclusion and is, in any event, not the unauthorised development alleged to have taken place.

Notice A: the appeal on ground (f)

18. An appeal on this ground is that the requirements exceed those that are necessary to remedy the breach of planning control or the injury to amenity. In this case the Council's purpose in issuing the notice is to remedy the breach of planning control.
19. The appellant does not in fact say what alternative steps would achieve the Council's purpose. Instead, it is said that the requirements would serve no useful planning purpose and that the effect of the building on the townscape is a matter of judgement. In the appellant's judgement, the refurbishment of the previous building represents an improvement to the townscape and character of the area.
20. That may well be true but is something that can only be considered in the context of an appeal on ground (a). However, in the absence of an appeal on that ground the court has held that general planning considerations cannot be considered when determining an appeal on this ground and the notice cannot be varied to attack its substance. In this case, that is the removal of the building to remedy the breach of planning control.

21. The appeal on ground (f) therefore fails.

Notice A: the appeal on ground (g)

22. An appeal on this ground is that the period to carry out the requirements is too short. Among other things, the appellant draws attention to the time that may be required to gain vacant possession of the building and requests a variation of the period for compliance to 9 months. The Council agrees to that request and has invited me to vary the notice to that effect. I see no reason not to do so and the appeal on ground (g) succeeds to that extent.

Notice A: conclusion

23. For the reasons given above I conclude that a reasonable period for compliance would be 9 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Notice B

24. Notice B could only have effect if the appeal against notice A succeeded and that notice was quashed. In that event, there would be a building and whether the current use amounted to a breach of planning control would need to be considered. It seems clear in those circumstances that the notices have been issued in the alternative. Since notice A is upheld, I shall quash notice B to avoid any uncertainty.

Brian Cook

Inspector