

Appeal Decision

Inquiry held on 15 February 2017

Site visit made on 15 February 2017

by Katie Peerless Dip Arch RIBA

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

Decision date: 2 March 2017

Appeal Ref: APP/P1560/C/16/3150747

Kings House, Little Clacton Road, Great Holland CO13 0EY

- 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 D King against an enforcement notice issued by Tendring District Council.
 - The enforcement notice, numbered 15/00143/BLDOP3 was issued on 22 April 2016.
 - The breach of planning control as alleged in the notice is the construction of a brick wall higher than 1 metre adjacent to a highway (as shown in the approximate position marked A-B and edged blue on the plan attached to the enforcement notice).
 - The requirements of the notice are 1. Demolish the brick wall as shown in the approximate position marked A-B and edged blue on the plan attached to the enforcement notice. 2. Remove all resultant debris from the step and from the land.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The enforcement notice is corrected by the deletion of the word '*from the step and*' from the requirements. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

Procedural matter

2. There is a typographic error in the requirements of the enforcement notice where they refer to removing debris '*from the step*'. I can correct this without injustice to either party and will therefore do so.

Main Issue

3. I consider that the main issue in this case is whether the development enforced against is immune from enforcement by reason of being substantially complete more than four years before the date of issue of the enforcement notice.

Appeal site

4. The appeal site is a residential property that was bought by the appellant in about 2010 and is now being redeveloped. The structure enforced against is a wall either side of the entrance driveway to the property, adjacent to the road. It is more than 1m high and would not therefore be development granted planning permission through the Town and Country Planning (General Permitted development Order) 2015.
-

Reasons

5. The enforcement notice was issued on 22 April 2016 but the appellant claims, under his appeal on ground (d), that the construction of the wall was substantially complete more than 4 years prior to this date and is consequently now immune from enforcement action.
6. In such a case the burden of proof is on the appellant who needs to demonstrate that, on the balance of probability, his version of events is correct. If the Council has no evidence of its own to contradict or undermine the appellant's version, the Government's Planning Practice Guidance (PPG) confirms that it should be accepted, provided that it is sufficiently precise and unambiguous.
7. There is a photograph, taken by the appellant's agent and dated March 2013, that shows the wall complete. There was no dispute at the Inquiry that the date was accurate or that the wall was finished by this date. However, this date is within the 4 years during which enforcement action could be taken and does not help the appellant's case on ground (d) although it does provide an agreed timeframe from which to consider the remainder of the evidence.
8. The appellant has supplied various other documents to support his original claim, submitted in response to the Council's Planning Contravention Notice, that the wall was complete by October 2011. Firstly, he has submitted a copy of a receipt from the company that supplied him with bricks and the quantities and description of the type of brick tally with those used in the wall. It is dated 15 July 2011 but this does not confirm when the wall was actually built.
9. Secondly, the appellant has also produced 2 photographs with a date on them of 21 September 2011 showing him with his daughter standing by the completed wall. If this date is correct, the wall would have been completed outside the time for enforcement action and the child would have been 2 years 4 months old in the pictures, as confirmed by a copy of her passport showing a date of birth in May 2009.
10. However, the Council has produced an aerial photograph which, they believe, dates from 4 October 2012 and which they claim confirms the wall had not yet been constructed at that time. Although the appellant says the photograph is not distinct enough to draw this conclusion, when compared with another aerial photograph taken after the wall was built, I consider that it clearly shows the entrance to the site edged by planting. There is no indication that the building of the wall has commenced and I am satisfied that it predates the building of the wall.
11. However, the photograph has been obtained from an online website that supplies such images but there is no certification of the exact date on which it was taken. Although I was given no documentary evidence on the matter, the Council's witness told the Inquiry under oath that the company had informed him that, while they cannot confirm the exact day, the months shown on their images are correct.
12. The appellant has suggested that the October date is unlikely as the image shows the trees in full leaf without any change in colour as might be expected in early autumn.

13. Nevertheless, if the appellant's date of completion of September 2011 is correct, the Council's submitted photograph would have to have been taken prior to this, which would mean that the date given by the company on the website was inaccurate by more than a year. Given the company's response on the accuracy of the month, this would seem to be unlikely.
14. I give little weight to the suggestion that the age of the appellant's daughter confirms the date on his photographs. If the wall was built after October 2012 as claimed by the Council, but before the agreed date of March 2013, she would have been between 3 years 5 months and 3 years 10 months in them. Children come in all shapes and sizes and it is entirely possible that the girl in the pictures could have been aged anywhere between 2 years 4 months and 3 years 10 months when the images were taken.
15. The Inquiry was not given sight of the original photographs or the digital files from which they were printed; all that has been submitted are photocopies of what appear to be photographs of the originals. It is therefore difficult to judge whether the dates on them are intrinsic or whether they could possibly have been added at a later date.
16. I note that the appellant has also given his evidence under oath, but he was not sure about dates such as when he purchased the property or when he carried out various works on the land. He did not take the photographs himself and the Inquiry did not hear evidence from the person who did. In these circumstances, the accuracy of the dates on the photographs has not, on the balance of probabilities, been established to my satisfaction.
17. As noted above, the Council has produced evidence that casts doubt on the appellant's version of events and, whilst the Council's evidence is also not conclusive, I consider it is just as credible as that of the appellant. Therefore, I am not persuaded that the evidence supplied to support the claim that the wall has been completed long enough to be immune from enforcement action is sufficiently precise or unambiguous to meet the test set in the PPG. The appeal on ground (d) consequently fails.

Conclusion

18. For the reasons given above I consider that the appeal should not succeed.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANT:

Peter Le Grys MA Dip TP MRTPI	Stanfords Land and Property Consultants
He called	
Mr Dave King	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jack Parker	Of Counsel
He called	
Oliver Ward BSc (Hons)	Former Planning Enforcement Officer, Tendring District Council

DOCUMENTS

- 1 Letter of notification and circulation list
- 2 Notes of Mr Parker's opening statement
- 3 Photograph dated 8 March 2013
- 4 Enlarged version of photograph in Council's appendix 5