
Appeal Decision

Site visit made on 21 March 2017

by D H Brier BA MA MRTPI

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

Decision date: 24 March 2017

Appeal Ref: APP/Z2830/C/16/3161153 & 3161154

Land adjacent to 47a Camp Hill, Bugbrooke, Northamptonshire NN7 3PH

- 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 R A Bird & Miss K E Hawkey against an enforcement notice issued by South Northamptonshire Council.
- The enforcement notice was issued on 11 October 2016.
- The breach of planning control as alleged in the notice is the erection of a 5 bar style gate adjacent to Camp Hill and a palisade style gate/fence adjacent to Camp Close.
- The requirements of the notice are demolish the 5 bar style gate adjacent to Camp Close and the palisade fence/gate including any associated posts adjacent to the turning head on Camp Hill and remove the constituent elements from the site.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (e) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the notice is quashed.

Costs Application

1. A costs application has been made by South Northamptonshire Council against the appellants. This is the subject of a separate decision.

Background

2. The appeal site is a rectangular parcel of land. It borders onto Camp Hill to the south-west, and part of its north-western boundary flanks the head of a short residential cul-de-sac that forms part of Camp Close.
3. The allegation refers to 2 separate and distinct entities, a 5 bar gate alongside Camp Hill and a palisade style gate and fence adjacent to Camp Close. However, while the requirements of the notice purport to secure the removal of these items, they do not tally with the allegation as they refer to the 5 bar gate being "*adjacent to Camp Close*" and the palisade fence/gate being "*adjacent to Camp Hill*". Nor does the plan attached to the notice throw any light on the discrepancy as it merely identifies the appeals site as a whole. It may be that the inconsistency between the allegation and the requirements is simply down to a drafting error. Nevertheless, to my mind, it imparts a strong element of uncertainty into the notice.

Appeal on Ground (e)

4. In order for the appeal to succeed on this ground it has to be shown that the notice was not properly served on everyone with an interest in the land.
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5. In essence, the appellants' case is based on the premise that they do not own the 5 bar gate. The Council maintain that the notice was served on all persons named in the Land Registry. However, in the exchange of correspondence after the notice was issued, the Council acknowledge that the 5 bar gate is outside the appellants' control¹.
6. It is not clear whether or not a Planning Contravention Notice, which might have helped to clarify the matter, was served before the notice was issued. And, although the Council indicate that the appellants have not advised them who else the notice should have been served on, the onus on ensuring that the notice was served correctly lay with the Council, not the appellants.
7. I find it difficult to imagine that the 5 bar gate would have been erected on a whim. It seems to me therefore that, on the balance of probability, whoever did so is highly likely to have had an interest in the land. I accept that the notice appears to have been issued correctly insofar as the appellants are concerned. But, when the matter is viewed in the round, given what the notice purports to achieve, it is perhaps self-evident that the party associated with the gate would have been materially affected by it.
8. In the light of the foregoing, I conclude that the notice was not served as required by section 172 of the 1990 Act. In the correspondence referred to above, the Council indicate that this is a matter that "*can be dealt with by the Inspectorate*"². Although this is not elaborated upon, I take this to mean that it would be possible for me to exercise my power to correct the notice. I disagree.
9. In particular, unlikely though this may have been, the possibility that, had the notice been served correctly, the party concerned may have chosen to appeal on ground (a) against the notice as a whole cannot be wholly discounted. As I see it, the denial of this opportunity has caused the party to be substantially prejudiced, in which case the provisions of section 176(5) do not apply.
10. I have reservations about whether the defect in the notice I have identified in paragraph 2 could be rectified without giving rise to injustice in any event. But, even if I set aside this matter, for the reasons given above, I am not satisfied that it would be appropriate for me to correct the notice.
11. The appeal on ground (e) therefore succeeds and the notice will be quashed. As a result, there is no need for me to consider the appeal on ground (b).

Formal Decision

12. The appeal is allowed and the enforcement notice is quashed.

D H Brier

Inspector

¹ Email dated 8 November 2016.

² Ibid.