
Appeal Decision

Site visit made on 8 June 2017

by Martin Joyce DipTP MRTPI

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

Decision date: 19 June 2017

Appeal Ref: APP/K0425/C/16/3162187

Land at 28 Southfield Road, Princes Risborough, Buckinghamshire HP27 0JB

- 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 Lewis Little against an enforcement notice issued by the Wycombe District Council.
- The enforcement notice, LPA Ref: 15/00612/OP, was issued on 22 September 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a boundary fence and siting of a car jack to the front of the dwelling.
- The requirements of the notice are to:
 1. Remove the car jack, situated in the area outlined in blue on the plan attached to the notice, from the land;
 2. Either remove the fence marked green on the plan attached to the notice from the land, or reduce the height of the fence marked green on the plan attached to the notice so that no part of it exceeds 1m in height (when measured from the highest point of the land immediately adjacent to the fence);
 3. Either remove the fence marked brown on the plan attached to the notice from the land, or reduce the height of the fence marked brown on the plan attached to the notice so that no part of it exceeds 2m in height (when measured from the highest point of the land immediately adjacent to the fence); and,
 4. Remove all resultant debris from complying with steps 1, 2 and 3 from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in Section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended. As the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under Section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matters

1. The appeal was originally made on grounds (b) and (f) but, following clarification of the appellant's case, it was accepted on grounds (c) and (f). The Council have not commented on the ground (c) appeal, rather their statement deals with grounds (b) and (f). However, I do not consider that this is prejudicial to them as they deal specifically with the question of whether or not the development requires planning permission or is permitted development under the terms of The Town and Country Planning (General Permitted Development (England) Order 2015 as amended (GPDO).
 2. On a further point of clarification, I have seen references to a "car ramp" in the representations and it appears that this is a consequence of an error in a letter
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from the Inspectorate which referred to that element of the development in that way, rather than, as stated in the notice, as a “car jack”. I am satisfied that the appellant has not been materially misled in any way by this error as it is quite clear, not least from his own photographs, what structure the notice is aimed at.

THE APPEAL ON GROUND (c)

3. The appeal on this ground relates only to the car jack sited at the front of the appeal property. It is formed of two vertical metal pillars, of about 3.5m in height, each bolted to the ground, which allow a car to be lifted and supported in order for the underside to be accessed. It is electrically operated, and I note that a wired connection is made to a box on the outside wall of the appeal property. The jack, or lift as the appellant also refers to it, also allows two vehicles to be parked within the same area – one over the other – as shown in one of the appellant’s photographs.
4. The appellant’s case on this ground is based upon a claim that he has been unable to find any reference to such development needing planning permission during his research, and also that the structure is moveable, so it is not a permanent fixed feature.
5. The burden of proof in an appeal on legal grounds such as this lies with the appellant, having regard to national procedural guidance¹, as referred to in the Planning Practice Guidance, and pertinent case law², with the relevant test being on the balance of probabilities³. He needs to show that the matters alleged in the notice have not occurred or, as the case may be, that planning permission is not required for those matters. In this case, a car jack has clearly been sited on the land and it constitutes an “other operation” or operational development, as defined in Section 55(1) of the Town and Country Planning Act 1990 (The Act). The fact that it is not, in itself, a building, or specifically referred to in this or other legislation, does not overcome that fact that the car jack is a structure than has been placed on and fixed to the ground.
6. It is also not a moveable structure, as it has been bolted to the ground and is clearly intended to be kept in a rigid and fixed position, not least for safety reasons. Ease with which it may be dismantled and moved to another position is not, therefore, the determinative factor in this case.
7. Finally, for the avoidance of doubt, I have considered whether the car jack would fall within any of the types of development that may be permitted under the terms of Part 1 of Schedule 2 to the GPDO, which allows certain development within the curtilage of a dwellinghouse. I do not consider, however, that any of the provisions within the various Classes of Part 1 would be applicable. Moreover, even if the car jack were to be considered to be a building, it would not fall within the type of development permitted under Class E as it is sited in a position forward of the principal elevation of the house.
8. For all of these reasons, therefore, I conclude that the car jack requires a grant of planning permission which has not been obtained. The appeal on ground (c) therefore fails.

¹ Annexe E of Procedural Guide “Enforcement Notice Appeals – England”, 23 March 2016, Planning Inspectorate.

² *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.

³ *Thrasyvoulou v Secretary of State for the Environment No 1* [1984] JPL a732.

THE APPEAL ON GROUND (f)

9. The appeal on ground (f) is based upon a claim that the lowering of the height of the two fences that enclose the area within which the car jack has been sited is unreasonable because it would be detrimental to the security of the site, including the privacy, safety and well-being of the appellant and his family, and because other fences in the area are of similar height. Moreover, the fencing is acceptable to immediate neighbours and no complaints have been made about it.
10. The close-boarded fencing is of a height of about 3m, and forms an L-shaped enclosure to the front garden area of the appeal property, which has been covered with a concrete hardsurface to facilitate the appellant's hobby of restoring classic cars. The car jack is used in connection with this hobby. I understand that enclosure was previously provided by a mature hedge which, from a photograph submitted by the Council, was of about 2m in height.
11. The need for security and the acceptability or otherwise of the fence in relation to neighbours' living conditions and the appearance of the wider area are matters which cannot be considered under this ground of appeal. They relate to the planning merits of the development, and do not fall to be considered in circumstances where the fee required for consideration of the deemed planning application under Section 177(5) of The Act has not been paid, and no appeal has been made on ground (a).
12. The Council are seeking, through the notice, to remedy the visual harm that has been caused to the area by the erection of the fencing. The steps require either the complete removal of the fencing, or a reduction in its height to that which would be permitted under Part 2 of Schedule 2 to the GPDO. Both steps are entirely reasonable given the need identified in the notice to restore the character of the street scene to that before the development took place, yet they take account of development that may lawfully be undertaken by any landowner to secure the enclosure of his or her property.
13. The appellant has not suggested any lesser steps that would achieve the remediation of the breach of planning control that has occurred. In all of the above circumstances the appeal on ground (f) fails.

Other Matters

14. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main grounds and issues of this appeal.

Conclusions

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

FORMAL DECISION

16. The appeal is dismissed and the enforcement notice is upheld.

Martin Joyce

INSPECTOR