



Appeal Decision

Site visit made on 12 February 2018

by Thomas Shields MA DipURP MRTPI

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

Decision date: 27 March 2018

Appeal Refs: APP/J1725/C/17/3180073, 3180074 19 Amersham Close, Gosport, PO12 2RU

- 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 Act).
 - The appeals are made by Mr Stephen McCallan (3180073) and Mrs Linda McCallan (3180074) against an enforcement notice issued by Gosport Borough Council.
 - The enforcement notice was issued on 12 June 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a 1.8 metre-high fence between points 1-2-3-4 on the attached plan and the erection or partial erection of a wooden outbuilding located in the approximate position shown edged and hatched blue on the attached plan and the creation of a hardstanding in the area shown hatched red on the attached plan.
 - The requirements of the notice are:
Remove the fencing between points 1-2-3-4 on the attached plan, remove the wooden outbuilding located in the approximate position shown edged and hatched blue on the attached plan and remove the hardstanding in the area Shown hatched red on the attached plan and restore the land to its former condition.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (f) of the Act.
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Decision

1. It is directed that the notice be varied by removing the plan attached to the notice and substituting instead the plan marked TS1 attached to this decision.
2. Subject to the variation the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters and background

3. No. 19 Amersham Close is a detached residential dwelling house located at the head of a cul-de-sac within a primarily residential area.
4. Subsequent to the issue of the enforcement notice the Council granted planning permission (Ref: 17/00334/FUL) for residential purposes. The permission included some of the land, fencing and hardstanding subject of the enforcement notice. Consequently, to the extent of the area covered by the planning permission the notice no longer has any effect.
5. For the sake of clarity I have therefore varied the notice by substituting the original plan attached to it with the one provided by the Council (now marked TS1) which relates solely to the remaining area of the enforcement notice unaffected by the grant of planning permission.

6. The partially built outbuilding referred to in the Notice was removed after the enforcement notice was issued. However, the appeal is determined on the condition of the appeal site (as now reduced) as existed at the date the notice was issued.
7. Although no appeal has been made on ground (c) – that some or all of the matters alleged in the notice are not a breach of planning control, the appellants suggest that the hardstanding is permitted development.
8. However, although the land affected may be in the appellants' ownership that does not mean it lies within the dwelling's curtilage; that being a prerequisite for permitted development rights to exist. From the evidence before me the development appears to have taken place on land which was part of wider amenity land, outside of the dwelling's residential curtilage, and therefore cannot benefit from householder permitted development rights.

The appeals on ground (f)

9. This ground of appeal is a claim that the requirements in Section 5 of the notice exceed what is necessary.
10. When a ground (f) appeal is made it is essential to understand the purpose of the notice. Section 173(4) (a) and (b) of the Act provide that the purpose is (a) to remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach.
11. The breach of planning control is the erection of fencing, partially constructed outbuilding, and creation of hardstanding. Since the requirement in Section 5 of the notice (as varied) is for complete removal of all of these works and restoration of the land to its former condition, the purpose of the notice clearly falls within section 173(4)(a); to remedy the breach of planning control that has occurred.
12. Therefore, given that the requirement goes no further than requiring the appellants to undo what has been done by removal of the works and restoration of the land, it clearly does not exceed what is necessary to remedy the breach of planning control.
13. The appellants' arguments on this ground of appeal mainly relate to the merit of the development; that it ought to be allowed to remain because it results in no harm in terms of visibility, openness and safety, and for personal circumstances. However, these arguments relate to a ground (a) appeal that planning permission should be granted, and are not relevant to an appeal on ground (f) which is strictly limited to that I have set out above. Since no appeal on ground (a) has been made I cannot take the merits argued by the appellant into account.
14. The appeal on ground (f) therefore fails.

Thomas Shields

INSPECTOR

Revised Plan: TS1



TOWN HALL, HIGH STREET,
GOSPORT,

DATE:
05/06/2017

Scale 1:500
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Land at 19 Amersham Close, Gosport

use the scale bar in p