
Appeal Decision

Site Inspection on 2 August 2019

by Graham Self MA MSc FRTPI

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

Decision date: 12 August 2019

Appeal Reference: APP/P0119/C/18/3215435

Site at: Northwick Road, Pilning, Bristol

- The appeal is made by Mr Michael McDonagh under Section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by South Gloucestershire Council.
- The council's reference is COM/18/0461/OD/3.
- The notice is dated 4 October 2018.
- The breach of planning control alleged in the notice is: "Without planning permission, erection of high (approximately 2.7m) brick/stone gate piers and brick/stone walls and the creation of a hardstanding by the spreading and imbedding into the land of imported crushed materials".
- The requirements of the notice are:
 - "(i) Demolish and remove from the land the brick, block and stone gate piers and the brick, block and stone walls (shown in the approximate position on the attached plan coloured blue and shown on photographic sheet marked KP1) together with the foundation materials.
 - (ii) Remove from the land the hardstanding and all crushed building materials (shown in the approximate position on the attached plan tessellated and coloured black and shown on photographic sheet KP2) spread and imbedded into the surface of the land.
 - (iii) Remove from the land all debris, waste and crushed building material together with all plant, equipment and machinery associated with the steps (i) and (ii) above.
 - (iv) Reinstatement the land to its condition prior to this development by in-filling with top soil pits, holes depressions and excavations caused by steps (i) and (ii) and sow with grass seed."
- The period for compliance is 56 days.
- The appeal was made on grounds (c), (f) and (g) as set out in Section 174(2) of the Town and Country Planning Act 1990 as amended (but see paragraph 2 below).

Summary of Decision: The appeal fails, although the enforcement notice is varied. The notice as varied is upheld.

Costs

1. An application for an award of costs has been made on behalf of the appellant. This application is the subject of a separate decision.

Withdrawal of Ground (g)

2. Paragraph 21 of the statement submitted by the appellant's agent contains the words: "GPS now withdraws the ground (g) appeal".¹ The final comments submitted for the appellant also state (in paragraph 18): "The appellant is not pursuing ground (g) now". I am taking those statements as confirmation on the appellant's behalf that ground (g) is withdrawn, and I make no further comment on that ground of appeal.

Ground (c)

3. This ground of appeal claims that what is alleged in the enforcement notice does not constitute a breach of planning control. The basis of the appellant's case is that part of the development is not a breach of planning control because construction was permitted by the GPDO.² In particular, it is argued for the appellant that the wall across the middle of the site shown in blue on the enforcement notice plan is less than 2 metres in height and was permitted under Class A of Schedule 2 of the GPDO, so there has not been a breach of planning control with regard to this section of wall.
4. The length of wall just referred to, which has a roughly east-west alignment, varies a little with changes in ground level but is mostly about 1.3-1.4 metres high. However, this length of wall is not a separate structure; it is part of a continuous wall, the west end of which is angled to the south and is up to about 2.7 metres in height - certainly more than 2 metres above ground level - with higher piers. Nearby are two other short lengths of wall, one curved, one straight, both also up to about 2.7 metres in height with higher end piers, although part of a wall closest to the road is lower.
5. The high sections of wall are laid out leaving gaps, one gap positioned as if to provide a possible future opening into the central part of the site, the other appearing to provide a possible opening into the northern part of the site. Two of these high sections of wall almost abut the highway and are certainly "adjacent" to the highway³; the third section is set further back but I judge that it is nevertheless adjacent to the highway. A line of fence posts about 2 metres in height runs across the site along an approximately east-west alignment a little to the south of the wall structures, and there is other fencing around the edges of the site. The posts and fencing are not the subject of the enforcement notice.
6. The construction of the lengths of wall described above was not "permitted development" under the GPDO for three reasons. First, the relevant part of the GPDO (as is quoted in the appellant's statement) refers to "the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure". The word "other" is important here, because it means that to be permitted by this part of the GPDO, the wall must be constructed as a means of enclosure.⁴ At the time of my inspection the sections of wall were standing as detached structures, isolated from any means of enclosure, in a part of the site mostly covered by unkempt scrub vegetation. As they stand, the

¹ "GPS" is an abbreviation of the name of the appellant's agent.

² Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

³ The term "adjacent" is in the phrase "adjacent to a highway used by vehicular traffic" in Class A.1(a) of Part 2 of Schedule 2 of the GPDO.

⁴ There are several court judgments on this point. Two well-known ones are: *Prengate Properties v SSE* [1973] JPL 313 & 25 P&CR 311; and *South Oxfordshire DC v SSE* [1986] 52 P&CR 1 & JPL 435.

sections of wall do not enclose any area of land - the lengths of wall nearest the road are too short to enclose anything and the lower length of wall extending to the rear appears to be subdividing the site, not enclosing it. There is no reason to believe that the situation was any different when the walls were erected and when the enforcement notice was issued. Walls which form freestanding structures or which function as a means of subdivision rather than enclosure - which I find is the situation which applied here when the enforcement notice was issued - would not come within the permitted development provisions of Class A of Part 2 of Schedule 2 and Article 3 of the GPDO.

7. Second, the two sections of wall nearest the road are clearly over the 1 metre height limit which applies in the GPDO to walls adjacent to a highway used by vehicular traffic. The same applies to the whole of the other length of wall, including the lower east-west section, because the high westernmost portion and the lower part extending eastwards across the site form one conjoined, continuous structure. Since part of it is adjacent to a highway used by vehicular traffic, the structure as a whole is adjacent to the highway, and as part of it is over 2 metres in height its construction was not permitted by Class A of Part 2 and Article 3 of the GPDO, even setting aside the "means of enclosure" point explained above.
8. Third, the appellant and his agent have not taken account of the height limit in paragraph A.1(b) of Class A of Part 2 of Schedule 2 of the GPDO. Under this provision, any excess in height over 2 metres takes the whole of a wall outside the permission granted by the GPDO. This applies to all of the lengths of wall enforced against.
9. In summary, the construction of the lengths of wall enforced against constituted development as defined in the 1990 Act. No specific planning permission was obtained for the development and it was not permitted by the GPDO or by any other means.
10. Turning to the hardstanding, the appellant contends that some of this has been permitted under the terms of a pre-development condition which was discharged after the enforcement notice was issued. The fact remains that at the time the enforcement notice was issued, the laying of the crushed materials as alleged was unauthorised. This operation involved development as defined under Section 55 of the 1990 Act, for which no planning permission had been obtained.
11. I conclude that the matters alleged in the enforcement notice constituted a breach of planning control. Therefore ground (c) of the appeal does not succeed.

Ground (f)

12. Under this ground of appeal it is argued that the requirements of the enforcement notice are excessive and go beyond what is necessary to remedy the breach of planning control. Three main points are raised. The first is that step (i) of the notice's requirements should be amended so that it only requires the walls and piers to be reduced to 1 metre in height where the structures are adjacent to the highway, so that they are within height limits permitted by the GPDO. The second is that step (ii) of the requirements is excessive as it applies to all of the hardstanding and should only apply to some of it, as part of it (described as "approximately 50%") has been permitted. The third is that step (iv) of the requirements is excessive as there was old hardstanding in place before the appellant bought the site and the requirement to reinstate the land to its condition before the development enforced against was carried out would involve leaving some hardstanding and replacing overgrown vegetation.

13. As explained above, I have found that when the walls and piers were built and when the enforcement notice was issued, these structures were not permitted under the GPDO because they were not (and still are not) means of enclosure. The same applies whether or not the height of the taller parts were to be reduced. Thus there is no merit in the argument that step (i) of the requirements should be amended so as to require only a reduction in height.
14. It is common ground between the appellant and the council that when the hardstanding subject to the enforcement notice was laid and when the notice was issued, the operation was unauthorised. Surfacing part of the site may have been later permitted, although whether the surfacing operation corresponds with the planning permission granted in 2017 is questionable. The council say that the condition referred to by the appellant (condition 15 of the 2017 permission) was only concerned with levels and did not grant approval for laying hardcore. My reading of Condition 15 is that it dealt only with "slab levels of the hardstanding" and other levels. Condition 9 of the permission appears potentially to have more relevance as it required a scheme of landscaping to be approved before the start of any development.⁵ However, several features of the development at the site do not appear to be in accordance with other conditions,⁶ which leaves me doubtful whether the whole development is lawful.
15. Be that as it may, it is not for me to arbitrate here on whether the 2017 permission has been lawfully implemented. To the extent that the permission may have permitted the surfacing of part of the site overlapping with the enforcement notice, the permission would override the requirements of the notice (under Section 180 of the 1990 Act). This is a matter which I must leave to be resolved between the appellant and the council. At the time the notice was issued, the requirement to remove all of the hardstanding was not excessive.
16. As regards the old hardstanding, the appellant (through his agent) originally argued that this was laid in about 2007 and had become lawful through the passage of time. Later, the appellant accepted that the old hardstanding was subject to an enforcement notice issued in 2010 which has never been complied with. Although no prosecution has followed so far (for reasons the council has not explained), this development has remained unlawful. Laying the later material on top of the earlier surface as described by the appellant's agent in a witness statement was also an unlawful operation as explained above. It is probably now not feasible to differentiate between the more recent and older material, in which case it is reasonable to require all the material to be removed⁷ and the old material still has to be removed anyway (subject to any partly overriding effect which the 2017 planning permission may have).

⁵ According to the appellant's main statement, this condition was "under consideration" in February 2019. The final comments state that it was discharged, as was Condition 10 on landscape maintenance, in June 2019.

⁶ For example, Condition 2 requires that the development shall be carried out in accordance with specified drawings including Drawing 16_785_003. The site is not laid out in accordance with this drawing, which shows among other things a planted bund along the road frontage. As far as I know from the available evidence the council has not, or not yet, issued any Section 187A breach of condition notice (against which there is no right of appeal).

⁷ There are some parallels here with the court judgment in *Ewen Developments v SSE & North Norfolk DC* [1980] JPL 404. This involved an embankment, part of which had gained immunity through the passage of time, part was formed more recently, and the two parts could not be readily distinguished. The Court of Appeal held that an enforcement notice could validly require the whole of the embankment to be removed. In the present case, whether the two stages of the development can be distinguished is of less relevance anyway, since even the old hardstanding is not immune, being subject to an extant enforcement notice.

17. Part of step (iv), referring to "in-filling with top soil pits, holes depressions and excavations", seems unnecessarily complicated (and there are minor flaws of wording and punctuation which could usefully be corrected⁸). I consider that this part of the notice can be simplified in response to the appeal on ground (f), by substituting a requirement to cover with topsoil to form an even surface and seed with grass seed. This amendment will also meet the appellant's argument that the council's restoration requirement could be interpreted as requiring the replacement of overgrown vegetation. The council did not specify the depth of soil or density of seeding, and if I were to specify a precise depth and seed density it could be argued that the notice is more onerous, thereby causing injustice; but as a matter of common-sense, these details have to be enough to support grass growth and thereby avoid causing further legal proceedings.
18. I have decided to vary the notice accordingly. Subject to that variation, the appeal on ground (f) does not succeed.

Other Matters

19. The appellant has argued - though this is not really related to grounds (c) or (f) - that the references to the walls in the enforcement notice are imprecise. I consider that the description of the alleged breach in the allegation, combined with the reference to the "approximate position coloured blue" and the photographs in step (i) of the requirements, are sufficient for these parts of the notice to be properly understood.

Formal Decision

20. I direct that the enforcement notice be varied by deleting the text in subparagraph (iv) under the heading: ""What You Are Required To Do", and substituting: "After step (ii) has been carried out, cover the affected area (the area where material has been removed) with topsoil so as to form an even surface layer of soil suitable for seeding with grass, and sow with grass seed".
21. Subject to that variation, I dismiss the appeal and uphold the notice as varied.

G F Self

Inspector

⁸ These are not crucial, but "top soil" should be "topsoil" and there should be a comma after the word "holes".