
Appeal Decision

Unaccompanied site visit made on 25 July 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 13 August 2019

Appeal Ref : APP/L3815/C/18/3211162

Land south west of Racton View, Marlpit Lane, Hambrook, West Sussex, PO10 8EQ

- 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 Adam Barton against an enforcement notice issued by Chichester District Council.
- The notice was issued on 6 August 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection of fencing and entrance gates, wing walls and piers and raised gravel banks contained by wooden sleepers in the approximate positions shown on the plan attached to the notice.
- The requirements of the notice are i) dismantle the fencing and entrance gates between points A and B shown on the plan attached to the notice and remove the resulting materials/debris from the land, ii) demolish the wing walls and piers and remove the resulting debris from the land, iii) remove the gravel and wooden sleepers from the land, and iv) following compliance with i), ii), and iii) above level the land and reseed with grass.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

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

Preliminary Matter

1. The Appellant did not attend the scheduled accompanied site visit. As the unauthorised development was visible from the highway I undertook an unaccompanied site visit.

Ground (b) appeal

2. This ground of appeal is that the alleged breach of planning control has not occurred as a matter of fact. The onus of proof rests on the Appellant and the test of evidence is the balance of probabilities.
3. The notice refers to raised gravel banks. The Appellant argues that there are no gravel banks but instead aggregate laid on a level membrane surface.
4. Whilst the gravel may sit on a membrane surface it is nevertheless in my opinion accurate to refer to it as a raised gravel bank albeit that the height of the bank may be marginally greater than before the development took place. The photographs produced by the Council support this conclusion. I find the

description of raised gravel banks sufficiently accurate to enable a recipient of the notice to understand the development the subject of the notice. I therefore do not consider it necessary to vary the notice.

5. On the evidence before me I conclude that raised gravel banks exist at the site. The alleged breach has therefore occurred as a matter of fact and consequently this ground of appeal does not succeed.

Ground (c) appeal

6. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. Certain development is granted planning permission by virtue of permitted development rights set out in the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO). The Appellant argues that the development is a means of enclosure which satisfies Schedule 2 Part 2 Class A of the GPDO and therefore benefits from permitted development rights.
7. Class A grants permitted development rights to the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure subject to certain specified conditions and limitations. Development is not permitted by Class A if the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would exceed 1 metre above ground level or if not adjacent to a highway it would exceed 2 metres above ground level.
8. The development in this case comprises fencing and an entrance gate, wing walls and piers and raised gravel banks. The Appellant argues that each element of the development is free standing and must be judged individually. I disagree. The development appears as one means of enclosure and in my opinion as a matter of fact and degree comprises a single structure providing an entrance to the site. The Appellant argues that the fencing on either side of the main gates is not adjacent to the highway as the pier walls curve around in front of them and shrubs sit in front of them. The shrubs do not provide a sufficient intervening obstruction to physically obstruct the fencing from the highway. I find as a matter of fact and degree that the enclosure as a whole defines the boundary of the property from the highway (and is perceived as such) and therefore the single means of enclosure is reasonably considered adjacent to a highway. It follows that the 1 metre threshold applies to the development as a whole. This threshold is exceeded and therefore it does not benefit from permitted development rights.
9. The Appellant comments upon a previous enforcement notice it is not within my remit to consider other development in the determination of this appeal and I have considered this appeal on its own particular facts.
10. For the reasons given above this ground of appeal does not succeed.

Ground (a) appeal and deemed application

11. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the appeal site and surrounding area.

Character and appearance

12. The appeal site comprises forestry land accessed from a narrow country lane known as Marlpit Lane. The site is bordered by mature trees and hedgerow. The development the subject of the notice comprises a vehicular entrance secured with double gates supported by brick piers flanked either side by fencing panels and curved wing walls.
13. The development plan (including the Chichester District Council Local Plan (the Local Plan)) mirrors the National Planning Policy Framework (the Framework) in seeking to ensure that development respects its surroundings. Policy 45 of the Local Plan provides that development within the countryside will be granted where it requires a countryside location and meets an essential, small scale and local need which cannot be met within or immediately adjacent to existing settlements.
14. The design, height and scale of the development is urban and formal in appearance. The solid entrance gate with its prominent fencing and solid wing walls dominates its setting. It is highly prominent from the highway and appears out of keeping with its rural setting. It stands in marked contrast to its agricultural setting and the simpler entrances found elsewhere in the locality. There is no justification before me for such an incongruous urban design.
15. I have considered permitted development rights as a fall back position. But the development carried out causes significantly greater harm than any permitted development.
16. I conclude as a matter of fact and degree that the development causes undue harm to the character and appearance of its rural setting. It does not accord with relevant policies in the development plan, including policy 45 of the Local Plan, or the Framework.
17. I have considered whether the identified harm could be overcome by conditions. I have taken into account the Planning Practice Guidance. Landscaping and painting conditions would not overcome the prominence of the structure.
18. For the reasons given I conclude that the appeal should not succeed. Planning permission should not be granted on the deemed application.

Ground (f) appeal

19. This ground of appeal is that the steps required to be taken by the notice are excessive.
20. There are two purposes that an enforcement notice can seek to achieve. The first is to remedy the breach of planning control and the second is to remedy injury to amenity caused by the breach. In this case the notice requires the removal of the development and therefore its purpose is to remedy the breach by returning the land to its condition before the breach took place. I do not consider that any lesser steps would satisfy this purpose.
21. The Appellant suggests that the development could be landscaped with planting or lowered to 1 metre in height. But landscaping would not remedy the identified harm. The notice does not prevent the exercise of lawful rights nor does it remove permitted development rights.

22. For the reasons given I do not find the steps required to be taken to be excessive and this ground of appeal does not succeed.

Formal Decision

23. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S. Prail

Inspector