



Appeal Decision

Site visit made on 15 October 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2019

Appeal A Ref: APP/E2205/C/19/3219611

Appeal B Ref: APP/E2205/C/19/3219612

Appeal C Ref: APP/E2205/C/19/3219613

Appeal D Ref: APP/E2205/C/19/3219614

Appeal E Ref: APP/E2205/C/19/3219615

Appeal F Ref: APP/E2205/C/19/3219616

Appeal G Ref: APP/E2205/C/19/3219617

Appeal H Ref: APP/E2205/C/19/3219618

Appeal I Ref: APP/E2205/C/19/3219619

Appeal J Ref: APP/E2205/C/19/3219620

Land adjacent to and to the rear of The George Public House, and to the rear of Oak Cottage, The Street, Bethersden, Ashford, Kent TN26 3AG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Duncan Brannan.
- Appeal B is made by Mrs Marion Ninnis.
- Appeal C is made by Mr Nicholas Randolph.
- Appeal D is made by Mrs Faith Spooner.
- Appeal E is made by Mr Edward Church.
- Appeal F is made by Mr Andrew Coveney.
- Appeal G is made by Mrs Nicola Coveney.
- Appeal H is made by Miss Mary Oliver.
- Appeal I is made by Mr Peter Ninnis.
- Appeal J is made by Mrs Joanne Brannan.
- Appeal K is made by Chris Phillips.
- The appeals are against an enforcement notice issued by Ashford Borough Council.
- The enforcement notice was issued on 3 December 2018.
- The breach of planning control as alleged in the notice is:
On 10 February 2011, the Council granted planning permission (Ref: 10/00641/AS)('the Planning Permission') for 'proposed residential development comprising 4 two bedroom houses, 1 one bedroom apartment, plus commercial unit (amended scheme to planning permission ref: 08/01821/AS).'
Condition (5) contained in the Planning Permission states that:
'The area shown on drawing number H-695 12a as vehicle parking space, garages and turning shall be provided, surfaced and drained in accordance with the details submitted to and approved in writing by the Local planning Authority before the use is commenced or the premises occupied, and shall be retained for the use of the occupiers of, and visitors to, the development, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development)(Amendment)(No 2)(England) Order 2008 (or any Order revoking and re-enacting that Order), shall be carried out in that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space.
Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to parking inconvenient to other road users.'

It appears to the Council that condition (5) contained in the Planning Permission has not been complied with because the vehicle parking space, garages and turning were not provided, surfaced and drained in accordance with details shown on approved drawing number H-625 12a before the use was commenced or the premises occupied (or at all). In addition, condition (9) contained in the Planning Permission states that:

'All hard and soft landscape works shall be carried out in accordance with the approved details drawing H-695-13b. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed with the local planning authority; and any trees or plants whether new or retained which with a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the local planning authority gives written consent to any variation

Reason: In order to protect and enhance the amenity of the area.'

It appears to the Council that condition (9) contained in the Planning Permission has not been complied with because no programme was agreed with the Council and yet the hard and soft landscape works, the details of which are shown on approved drawing H-695-13b, were not carried out prior to the occupation of parts of the development (or at all).

- The requirements of the notice are:

Condition (5) contained in the Planning Permission

- (i) *Carry out fully the vehicle parking space, garages and turning works, in strict accordance with details shown on the attached drawing number H-695 12a approved under the Planning Permission.*

Condition (9) contained in the Planning Permission

- (ii) *Carry out fully the hard and soft landscaping works, in strict accordance with the details shown on the attached drawing H-695-13b approved under the Planning Permission.*

- The period for compliance with the requirements is:
Condition (5): *four months after this notice takes effect.*
Condition (9): *twelve months after this notice takes effect.*
 - The appeals are proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appeal form lists ten appellants. An additional appellant, Chris Phillips, came forward the day following submission of the appeal form. Although notification was received that they wished to be considered an appellant, no reference number was attached to their appeal. Nevertheless, I have treated their appeal (Appeal K) in the same manner as those of the other appellants.
3. The appellants occupy the properties that resulted from the development granted planning permission. They state that the developer did not carry out the work required by the planning permission and that the developer should be responsible for carrying out the works to comply with the planning permission. Whilst I have sympathy to the circumstances described, this is an ownership issue that is a private matter between the relevant parties and not within my jurisdiction. As a result, it does not fall within the available grounds of appeal. Nevertheless, the appeals were made under ground (f) so I shall deal with them as follows.

The Appeals on Ground (f)

4. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
5. In this case, the requirements seek to provide, surface and drain the vehicle parking, garages and turning, and to provide the hard and soft landscaping. As such, the requirements go no further than seeking full compliance with the requirements of conditions 5 and 9 of the planning permission. Clearly, therefore, the purpose of the notice is to remedy the breach of planning control.
6. The appellants have confirmed that the works required by the notice would make the development comply with the terms of the planning permission, including conditions.
7. As a result, I conclude that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control. The appeal on ground (f) therefore fails.

Conclusion

8. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

AJ Steen

INSPECTOR