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## Appeal Decisions

Site visit made on 5 December 2019

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

**an Inspector appointed by the Secretary of State**

**Decision date: 3<sup>rd</sup> January 2019**

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**Appeal A Ref : APP/W1525/C/18/3219220**

**Appeal B Ref: APP/W1525/C/18/3219221**

**Land at Tall Oaks, Mayes Lane, Sandon, Chelmsford, Essex, CM2 7RW**

- The appeals are 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 Ian Moss and Appeal B is made by Mrs Lesley Moss against an enforcement notice issued by Chelmsford City Council.
- The notice was issued on 21<sup>st</sup> November 2018.
- The breach of planning control as alleged in the notice is without planning permission the formation of a vehicular access and construction of associated gates, fencing and hard standing.
- The requirements of the notice are i. cease the use of the access shown outlined in blue at the approximate location on the plan attached to the notice by motor vehicles, ii. demolish the timber gates and fencing and scrape clean from the ground the hard standing associated with the unauthorised vehicular access within the area outlined in blue on the plan attached to the notice and remove from the land all materials arising from these works, iii. reinstate the hedge adjacent to the highway by planting a native mixed species hedge within the approximate location should outlined in green on the plan attached to the notice.
- The period for compliance with the requirements is two months for steps i. and ii. above and step iii. to be complied with in full by 31 March 2019.
- The appeals are proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: the appeals are dismissed and the enforcement notice is upheld with correction.**

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### Appeals A and B

#### Preliminary Matter

1. The enforcement notice includes a specific date for compliance with step 3 and this date has passed. An enforcement notice should be clear and unambiguous. In the event that the notice is upheld despite the absence of a ground (g) appeal I shall amend the notice to provide for a future compliance date.

#### Ground (c) appeal

2. 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. The meaning of development includes the carrying out of building, engineering, mining or other

operations in, on, over or under land. The burden of proof in this appeal rests upon the Appellants and the test of evidence is the balance of probabilities.

3. The Appellants claim that the works the subject of the notice benefit from permitted development rights and are therefore not a breach of planning control.

#### Vehicular access and hardstanding

4. The Appellants argue that the works to create the vehicular access benefit from permitted development rights by virtue of Schedule 2 Part 2 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
5. Class B provides for permitted development rights for the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part).
6. There is no dispute that the vehicular access is a means of access to a highway which is not a trunk road or a classified road. The issue in dispute is whether the access is required in connection with development permitted by any Class in Schedule 2 (other than Class A). Class A concerns the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure subject to certain specified conditions and limitations. Class F development consists of the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such or the replacement in whole or part of such a surface.
7. The appeal site has in the past formed part of the curtilage of the residential property known as Tall Oaks. Tall Oaks was sold in August 2016 and the parties agree that a separate planning unit was created and I have no reason to conclude otherwise.
8. The Appellants argue that the vehicular access the subject of the notice was required in connection with the formation of a hardstanding within the residential curtilage of Tall Oaks to gain access to the outbuildings and in connection with the intention to lay a hardstanding between the gates/boundary fencing and the highway. They argue that the works to create the access were substantially completed before the sale of the land when the appeal site was part of the residential curtilage of Tall Oaks and that the works benefit from Class F rights. The Council argue that the works were carried out in connection with the works to construct a fence to subdivide the plot to create a new planning unit and that as this would fall within Class A it is expressly excluded from Class B and therefore permitted development rights do not apply.
9. The onus of proof in this appeal rests firmly upon the Appellants. Whilst the Appellants' evidence does not need to be independently corroborated in order to be relied upon it does need to be precise and unambiguous. I have carefully considered the evidence before me including the planning history and photographs. I note the email from a transport company but this lacks supporting detail and is not consistent with the evidence produced by the

Council. I cannot be satisfied on the evidence before me that the vehicular access and hard surface were substantially completed before the subdivision of the planning unit. The sequence of events is not clearly shown by the evidence before me. The burden of proof has not been discharged and I cannot conclude with any certainty that the works were carried out at a time before the creation of a new planning unit. I cannot conclude that it is more likely than not that the works benefit from Class F or any other permitted development rights.

#### Gates and fencing

10. The Appellants argue that the gate and fence is permitted by Schedule 2 Part 2 Class A (a) of the GPDO. Class A.1(a) provides that development is not permitted by Class A if the height of any gate, fence, wall or other means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed (other than in the case of a school) 1 metre above ground level.
11. In this case the fencing creates a boundary with the highway. It varies in height and distance from the highway but there is no dispute that it exceeds 1 metre at its highest point. The Appellants argue that the fencing only exceeds the 1 metre threshold where it is not truly adjacent to the highway. But I consider it reasonable to consider the fencing as a whole in this case and the permitted development tolerance is exceeded.
12. For the reasons given above the ground (c) appeal does not succeed.

#### **Ground (f) appeal**

13. This ground of appeal is that the steps required to comply with the notice are excessive.
14. There are two purposes which an enforcement notice can seek to achieve. The first is to remedy the breach of planning control and the second is to remedy the injury to amenity caused by the breach. In this case the notice requires cessation of the use of the access by motor vehicles, demolition of gates and fencing, removal of hardstanding and reinstatement of hedging thereby restoring the land to its condition before the breach took place. Its purpose is therefore to remedy the breach of planning control and no lesser steps would achieve that purpose.
15. The Appellants argue that the notice abrogates pre-existing rights and should be amended accordingly. But an enforcement notice cannot remove lawful rights and it does not purport to do so. I do not consider it necessary to amend the notice in this case in order to give effect to lawful rights.
16. For the reasons given, I conclude that the requirements of the notice are not excessive and this ground of appeal does not succeed. I shall uphold the notice with correction.

## **Formal Decisions**

### **Appeals A and B**

17. It is directed that the enforcement notice be corrected by deletion of the phrase '31 March 2019' in paragraph 6.11 of the notice and substitution with '31 March 2020'. Subject to this correction the appeals are dismissed and the enforcement notice is upheld.

*S. Prail*

**Inspector**