
Appeal Decision

Site visit made on 4 February 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 17 February 2020

Appeal Ref: APP/K2420/C/19/3234608
34 Wendover Drive, Hinckley, LE10 1UQ

- 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 Stuart Mallinson against an enforcement notice issued by Hinckley and Bosworth Borough Council.
 - The enforcement notice was issued on 1 August 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a concrete post, in the approximate position marked with a cross on the attached Enforcement Plan.
 - The requirements of the notice are
Remove the concrete post in its entirety marked in a cross on the attached "Enforcement Plan".
 - The period for compliance with the requirements is 30 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The appeal under ground (c)

2. An appeal under ground (c) is that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. With an appeal under ground c, the onus is on the appellant to make out the case that there has not been a breach of planning control.
3. The single concrete post, the subject of the notice, is around 2 metres in height and is in the front garden of 34 Wendover Road within close proximity of the pavement. From my site visit, I observed that the concrete post whilst stand-alone is of a similar design to the posts that form part of the existing fence further back in the front garden. However, the single concrete post is currently not part of a fence.
4. The appellant's argument is that the concrete post does not fall within the definition of "development" as defined in the Town and Country Planning Act 1990 and therefore no breach of planning control has occurred as planning permission is not required. Section 57 of the Act sets out that planning permission is required for the carrying out of development. The definition of development set out in Section 55 of the Act includes "the carrying out of building, engineering, mining or other operations in, on, over or under land.....".

5. Section 336 (1) of the Act sets out a list of definitions for the purposes of the Act. A "building" includes any structure or erection and is therefore wider than the dictionary definition of a building. As the concrete post has been erected, it falls within the definition of a building and is therefore development.
6. The appellant has referred to permitted development rights and states that the concrete post is not excluded by "development not permitted". However, Schedule 2 of Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) states that "the erection... of a gate, fence, wall or other means of enclosure" is permitted development. The GPDO then sets out at A.1 limitations where such "development is not permitted."
7. However, as the development is not a gate, fence, wall or other means of enclosure, it does not fall within the category of permitted development as set out in the first part of Class A. No subsequent assessment of whether a limitation contained within A.1 applies is therefore required. As the concrete post does not benefit from permitted development and does not have express planning permission, a breach of planning control has occurred. The ground (c) appeal therefore fails.

Conclusion

8. For the reasons given, I conclude that the appeal should not succeed and the enforcement notice should be upheld.

E. Griffin

INSPECTOR