
Appeal Decision

Site Inspection on 2 March 2020

by Graham Self MA MSc FRTPI

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

Decision date: 12th March 2020

Appeal Reference: APP/B1740/C/19/3225941

Site at: Carrington Caravan Park, New Lane, Milford-on-Sea, Lymington SO41 OUQ

- The appeal is made by Mr R Bull (see "Procedural Matters" below) under Section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by New Forest District Council.
- The council's reference is EN/18/2381.
- The notice is dated 27 February 2019.
- The breach of planning control alleged in the notice is: "Without planning permission the construction of brick walls over 1m as a means of enclosure around a vehicular and pedestrian access adjacent to the highway as shown in blue on Plan A and Plan B attached, including decorative pieces (pillars and statues), lighting fittings and gate posts".
- The requirements of the notice are:
 - (i) To remove the constructed brick walls forming a means of enclosure around the vehicular and pedestrian access as shown in blue on the attached plans A and B, including any decorative pieces (pillars, statues), lighting fittings and gate posts.
 - (ii) Following compliance with (i) above, make good all holes and re-level the land using topsoil and re-seed with grass seed.
 - (iii) Following compliance with (i) & (ii) above, remove all resultant materials from the site.
- The period for compliance is three months.
- The appeal is proceeding on grounds (a), (c) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal fails.

Procedural Matters

1. Some of the past correspondence about this appeal, including communications from the Planning Inspectorate, has referred to the appellant as ""Milford on Sea Park Ltd". The appeal form names Mr R Bull as the appellant. Although the company name (Milford on Sea Park Ltd) is also entered in the form, Mr Bull is specified as the appellant, and this is confirmed in Part J where the agent who completed the form stated that he was acting on behalf of Mr R Bull.

2. Other evidence, including the absence of Mr Bull's name the list of those served with the enforcement notice,¹ and a certificate of ownership submitted with a 2018 application for planning permission,² suggests that Mr Bull as an individual is not, and was not at the date the notice was served, an owner of the land or an occupier by virtue of a licence. If that is so, he had no right of appeal. However, I have decided to treat the appeal as valid on the basis that if Mr Bull personally did not have a right of appeal he can be regarded as having acted as agent for the company Milford on Sea Park Ltd, making the consultant who lodged the appeal on his behalf in effect a sub-agent.³

Ground (c)

3. Under this ground of appeal it is claimed that the matters alleged in the enforcement notice did not constitute a breach of planning control. Two main arguments are raised. One is that the walls enforced against are not adjacent to a highway, having regard to the intervening distance from New Road and to GPDO tolerances.⁴ The appellant's other main argument is that the structures enforced against replaced a wall or walls which previously existed, and the new walls can be regarded as an improvement or alteration no higher than previously existed and were therefore "permitted development" under the GPDO.
4. Under Article 3 and Class A of Part 2 of Schedule 2 of the GPDO, the erection of a wall or other means of enclosure is permitted, subject to certain provisos. One of the provisos is that development is not permitted by Class A if the height of any wall or means of enclosure erected adjacent to a highway used by vehicular traffic would exceed 1 metre above ground level. There is no dispute that New Lane is a highway used by vehicular traffic.
5. The structures enforced against as shown on the enforcement notice plan consist of several curved and straight sections of wall, all joined to each other except for the separation on each side of the site entrance and a gap where sections of wall mostly enclose some waste bins. The front parts do not immediately abut the road, but I find that they are adjacent to the road - there is a small set-back and a curved strip of land edged by granite blocks and covered with shingle with some low planting, but this is not a significant intervening feature. Other parts are further away from the road and some sections of wall are not parallel to the road, but because the various parts of the overall structure are linked together, I judge that the whole structure is adjacent to the highway within the meaning of the GPDO.
6. That finding is not affected by the fact that the disputed walls replaced or partly replaced some lengths of wall which previously existed. Nor did the development enforced against involve merely improving or altering previously existing structures. The available evidence indicates that previous walls were removed and were then replaced or partly replaced - indeed, "replaced" is the term used in

¹ This refers to the list supplied by the council with the standard appeal questionnaire. It contains details of numerous persons who appear to be occupiers of mobile homes on the appeal site and some companies who appear to have a financial or related interest in the site, but not Mr R Bull.

² This certificate names a different company (Royale Parks Ltd) as the then owner. Mr R Bull may be a director of both of these companies and they may be private limited companies, but limited companies and persons are different legal entities.

³ My treatment of this matter might have been different if I had been minded to allow the appeal, particularly on ground (a), since an outcome involving a planning permission granted on an arguably invalid appeal could cause legal problems.

⁴ GPDO is an abbreviation for the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

the statement for the appellant. Whether the new walls are no higher than the old walls is irrelevant to ground (c) - the old walls were evidently demolished and different, new walls (with items such as the concrete capping, pillars and light fittings) were then built. Moreover, what happened was not "like for like" replacement - quite apart from the use of different materials, the new walls are evidently more extensive than the old.

7. In summary, I find that development has been carried out which was not permitted by the GPDO and required specific planning permission. No such permission was obtained. I conclude that the matters alleged in the enforcement notice constituted a breach of planning control.

Ground (a)

8. This ground of appeal is a claim that planning permission should be granted for the development enforced against. The main issue is the visual impact of the development, having regard to relevant planning policies and to the possible "fall-back" position arising from permitted development under the GPDO.
9. The mobile home site is a pocket of urban development in open countryside outside the main built-up area of Milford-on-Sea. The surrounding land is mostly flat and there is little natural vegetation to screen views. The disputed walls stand out as a prominently noticeable feature in close views from New Lane and are jarringly out of keeping with the area. This effect is partly because of the yellow-coloured brick, which is not "bright yellow" as described by the council but does not appear to reflect any local characteristic or geology, and partly because the height and design of the walls also gives them a dominant appearance.
10. In some locations, flamboyant design can be a virtue, or at least acceptable, but here, the pillars with overhanging capping are bizarrely over-ornate features, especially when combined with the statues which are visible in the council's photographs and appear to have been in place when the enforcement notice was issued. The overall effect is to create an appearance somewhere between a Roman bath-house and a kind of Athenian mini-Erechtheion plonked into Hampshire's coastal plain.
11. I give little weight to the argument for the appellant that the wall which previously existed was not of rural character or sympathetic to nearby hedgerows partly because of its allegedly "bright orange" colour (which the council describe as red brick). Even if the previous structure was not in keeping with its surroundings that is not a good reason for replacing it with something worse.
12. The fact that a wall up to 1 metre high could be erected under the permitted development provisions of the GPDO (subject to any contrary direction) is not in my judgment persuasive. A much lower wall would not have the obtrusive prominence of the existing structure.
13. The council's case is supported by national and local planning policies. The National Planning Policy Framework provides that the design of developments should be "sympathetic to local character". Policy CS2 of the adopted Core Strategy covering this area provides that (among other things) new development should respect the character, identity and context of the countryside and be sympathetic to its setting with regard to scale, appearance and materials. The development enforced against does not meet those criteria. There is also a conflict with green belt policy, as the appeal site is evidently within designated green belt. Even allowing for the presence of the mobile home park itself, the walls and associated structures detract from the openness of the area, and the

very special circumstances which might sometimes justify such development in the green belt do not arise in this instance.

14. Taking all the above factors into account I conclude that planning permission should not be granted. Therefore the appeal on ground (a) fails.

Ground (f)

15. Ground (f) concerns the requirements of the enforcement notice. The basis of the appellant's case on this ground is that the requirements are excessive and should be amended so that instead of complete removal, the walls could be lowered to a height which would be within "permitted development" limits. Some of the appellant's arguments on this matter are also put forward in support of the appeal on grounds (c) and (a). For example, it is argued that a rebuilt wall could be 1 metre high at the front rising to the height of the existing wall at the end of the access. That is not so, for reasons I have explained above about the continuity of the structure making the whole structure adjacent to the highway.
16. I have found that what has been built is in breach of planning control, and I have decided against granting planning permission for its retention. In these circumstances the requirement to remove the unauthorised development is not excessive. In any case, reducing the height as suggested by the appellant would result in odd-looking stubby pillars, and walls with materials having an unsuitable colour for this area. I can see that some sections of wall perform a useful function by screening the bin store area, but whether that might justify a structure of a specific height might usefully be a matter of negotiation with the council - it is not for me to redesign a proposal.
17. I note the argument that the requirements of the enforcement notice would cause a waste of materials and increased landfill. Some waste of resources may be unavoidable when unauthorised development is required to be undone. That is unfortunate and contrary to "sustainable development" objectives, but given normal modern recycling practices any wastage should be minimised, and the possibility of it occurring does not justify relaxing the requirements of the notice.
18. As regards the grass-seeding requirement, the appellant contends that the existing walls were erected on an existing hardstanding or existing foundations. It is not possible to verify this by on-site inspection but photographs of the original walls suggest that it is only partly true. I do not know whether discussions will take place between the appellant and the council about a replacement boundary feature. If, for example, this were to be a hedge, or perhaps a low wall backed by a hedge, sowing with grass seed might not be appropriate. Nor do I know whether the council will take steps to remove permitted development rights through a direction under Article 4 of the GPDO.
19. On balance, I have decided the requirement for seeding with grass is not excessive and I have decided not to vary the enforcement notice by deleting it. The council have powers to waive this requirement if negotiations result in a satisfactory form of replacement boundary treatment which would make seeding with grass unnecessary, but that would be a matter for the council.

Other Matters

20. During my inspection I noted that two tall posts (which appeared to be black-painted metal) stood on either side of the site entrance. Their presence is not specifically mentioned in evidence and I do not know what their planning status is or when they were put in place.

21. In reaching my decision I have had regard to all the other matters raised in evidence on which I have not specifically commented. I have also noted the written submissions by Milford-on-Sea Parish Council and by a number of local residents objecting to the development. Some of the objections are overstated - for example, I do not see good reason to believe that the development would harm wildlife to the extent described by one resident - but the general thrust of local objections reinforces the planning authority's case.

Formal Decision

22. I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

G F Self

Inspector