



Appeal Decision

Site visit made on 7 January 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2020

Appeal Ref: APP/N1160/C/19/3220794 & 3223938
58 Coombe Way, Plymouth PL5 2HB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act) by the Planning and Compensation Act 1991.
 - The appeals are made by Mr David Fletcher and Ms Jane Burgess against an enforcement notice issued by Plymouth City Council.
 - The enforcement notice was issued on 20 December 2018.
 - The breach of planning control as alleged in the notice is the construction of raised deck, screening and store without benefit of planning permission.
 - The requirements of the notice are
 1. Remove timber decking screening and store;
 2. Remove all demolished materials from the site.
 - The periods for compliance with the requirements are:
 1. 2 calendar months
 2. 3 calendar months
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 4 February 2020.

Decision

1. It is directed that the enforcement notice is varied by the deletion at Section 6 (Time for Compliance) of the first time for compliance "2 Calendar months" and the second time for compliance "3 Calendar months"

and their substitution with:

a revised first time for compliance of "4 Calendar months" and for the second time for compliance, "5 Calendar months"

2. Subject to these variations, the enforcement notice is upheld.

Procedural Matters

3. The appeal form indicates that the notice being appealed was issued on 21 December 2018. However, the copies that the appellant and the Council provided refer to 20 December 2018 as the date of issue. From the context of the representations it is clear that a minor error was made on the appeal form and that I am dealing with the correct notice.

4. The appellants have referred in their submissions to the refused planning application referenced 16/02044/FUL which proposed the alteration of the structure rather than the development as addressed by the enforcement notice. That refused application is not the subject of these appeals and was the subject of a previous dismissed appeal (APP/N1160/D/17/3170774). For the avoidance of any doubt, as set out in the header above, a fee has not been paid for the deemed planning application for the development as alleged in the notice. A previous refused application to retain the decking was also dismissed at appeal (APP/N1160/D/15/3139066). I am not therefore re-considering the planning merits of this development. I am also not re-assessing the views reached by the Council regarding whether planning permission was required for other developments nearby.

Validity

5. Within the appeal on ground (e), the appellant has raised some concerns about the contents of the notice which relate to its validity. The appellant considers that the notice should have referred to s172 of the Act rather than s171A(a). Whilst the powers to issue an enforcement notice are prescribed within s172 of the Act, it is a requirement of s173 (the contents of a notice) at paragraph (1)(b), that an enforcement notice must state "the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls." In this case the Council has specified s171A(1)(a) which relates to "carrying out development without the required planning permission" and that is the correct nature of breach as described in section 3 of the notice.

Application for costs

6. An application for costs was made by Plymouth City Council against Mr David Fletcher and Ms Jane Burgess. This application and the counter-claim application for costs are the subject of separate Decisions.

The Appeal on ground (e)

7. To succeed on this ground, it is necessary for the appellant to demonstrate that copies of the notice were not served as required by s172 of the Act.
8. Part 1 of the notice states that an annex is at the end of the notice with enclosures which contain important information. The appellant states that there was no annex attached to the notice. The Council has not addressed this directly other than to say that the notice has been drafted in accordance with the example guidance provided at 'www.gov.uk'. The copies of the issued notice provided in this appeal by both the appellant and the Council complies with the guidance and the example notice which is linked from the Planning Practice Guidance. However, neither of those copies includes an annex as shown attached to the example notice.
9. Section 173(10) of the Act along with Article 5 (a) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 have the effect of requiring that every copy of an enforcement notice served by a local planning authority under section 172(2) of the Planning Act is accompanied by an explanatory note which shall include, amongst other things, (a) a copy of sections 171A, 171B and 172 to 177 of the Planning Act, or a summary of those sections. Furthermore regulation 5(iv) requires that the

applicable fee payable for the deemed application, should be included within the explanatory note.

10. The Council issued the notice just before Christmas when it would have been difficult initially for the appellants to obtain advice from planning officers due to the number of public holidays. However, the Council in setting the effective date of the notice as 1 February 2019, did allow for more than the minimum 28 day period for the appeals to be lodged.
11. Valid appeals were lodged on 19 January after which the appellants had more time to make further representations and to seek advice from legal experts or planning consultants if they had felt it was necessary to do so. They were also contacted by the Planning Inspectorate in writing, to make it clear that the planning fee could still be paid by 28 March 2019, in order to have the deemed planning application considered.
12. From the submitted evidence, it would appear that the notice was not correctly served due to the missing annex and details of the deemed application fee. However, the appellants have submitted detailed representations with clear grounds of appeal.
13. The letter sent with the notice was addressed to Mr David Fletcher but then started "Dear Mrs Burgess". This is clearly a minor administrative error however, both Mr Fletcher and Mrs Burgess were addressed and appear to have been aware of the notice. The list of people served also indicates that both were served a copy of the notice.
14. Notwithstanding the errors, I do not consider that the appellants have been substantially prejudiced by any failures that may have occurred with the issuing and service of the notice. The appeal on ground (e) therefore fails.

The Appeal on ground (b)

15. To succeed on this ground, the onus is upon the appellant to demonstrate that the alleged breach has not occurred, as a matter of fact.
16. The appellants' representations refer to the effect of the development rather than whether the development as alleged has occurred as a matter of fact. When I visited the site, the development as described on the notice was in place. The ground (b) appeal must therefore fail.

The Appeal on ground (c)

17. The appeal on this ground is that the alleged breach of planning control does not constitute a breach of planning control. The main issue under this ground of appeal is whether the alleged development would be permitted development under the provisions of Article 3, Schedule 2, Part 1 of the GPDO¹. The appellants consider that the development in part at least is permitted development, in particular that the garden store falls within the limitation of Class E of Part 1 to the GPDO, which relates to the provision of buildings within the curtilage of the dwellinghouse.
18. At the rear of the dwellinghouse, the natural ground level appears to fall away rapidly down to the land along the rear of this and adjoining gardens which separates the gardens from the woodland beyond. The decked area has been

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

built out from the rear wall of the dwelling, close to the patio doors and provides a level verandah or platform which is also enclosed by screens on all sides, with steps down to enable access to the store and land at the rear. The store is beneath the deck which forms the top surface of its roof. They share structural elements as do the screens along the sides and end of the decked area. Parts of the development as described on the notice are not severable from each other. There is no evidence that these parts of the structure were erected as separate operations. As a matter of fact and degree, the development as alleged on the notice forms a single structure. At Class E of the GPDO, paragraph E.1. tolerances of the development permitted by that class are defined. Development is not permitted under this class if it includes a verandah, balcony or raised platform, such as in this case.

19. There has been no dispute between the parties regarding paragraph E.1. (b) relating to the limitation of this class that prevents more than 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse) from being developed. The structure does cover a substantial part of the curtilage but I do not have sufficiently detailed information to reach a view with respect to that limitation. Given my conclusion above it is not necessary for me to do so.
20. Additionally, the appellants also suggest that the development such as the boundary fencing, could be altered in order for it to comply with the terms of the GPDO. However, that relates to the consideration of ground (f) and I will deal with it in that way.
21. The development as alleged does constitute a breach of planning control and the ground (c) appeal therefore fails.

The Appeal on ground (f)

22. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The notice requires the removal of the entire development and the clear purpose of the notice is therefore to remedy the breach of planning control and not the alternative purpose in s173(4)(b), to remedy injury to amenity.
23. The appellants state that the boundary fencing can be lowered to 2m in height to comply with the limitations of Schedule 2, Part 2 of the GPDO. However, it has been held that the prescribed tolerances in the GPDO should not be regarded as limitations but as part of the definition of the permitted development. Development built which exceeds the tolerances of the GPDO is entirely outside permitted development rights. It is not therefore possible to vary the notice in this way and still remedy the breach of planning control. This does not interfere with the ability to subsequently undertake development according with the limitations and conditions of the GPDO.
24. It is not unreasonable to require the removal of the materials used to construct the unauthorised development and the Council has allowed for additional time after removal of the decking, for this to be undertaken. The requirement would not prevent the materials being taken away, stored and then re-used in the construction of a lawful development subsequent to compliance with the notice.
25. There are no alternative lesser steps that would achieve the purpose of the notice. The ground (f) appeal therefore fails.

The Appeal on ground (g)

26. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant has requested 6 months.
27. I have not been able to consider the planning merits of this case. I therefore must take the harm as alleged in the notice at face value. The development causes harm to neighbours' living conditions.
28. The structure is of a substantial scale, clearly has structural complexities to it and space is limited to carry out the work. I can appreciate the care that will be required to dismantle and remove it. I can also understand that the appellant will have limited free time in the 2 months currently allowed for, to achieve compliance with both requirements when other commitments are considered, including having to be 'on-call' for work during at least 1 weekend in that period.
29. Further time is justified in my opinion. However, I also consider that 6 months would be a disproportionately long period during which the neighbours would have to endure the harmful impacts. I consider that 4 months would be more reasonable and proportionate time to comply with the first requirement of the notice and 5 months for the second.
30. The appeal on ground (g) succeeds.

Conclusion

31. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

A Harwood

INSPECTOR