



Appeal Decision

Site visit made on 9 March 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2020

Appeal Ref: APP/P1615/C/19/3232994

128a Church Road, Cinderford, Gloucestershire GL14 3EH

- 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 Daniel Mason against an enforcement notice issued by Forest of Dean District Council.
 - The enforcement notice was issued on 24 June 2019.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the construction of a car parking area to the front of the host dwelling on the Land giving off road parking.
 - The requirements of the notice are:
 - 1) *Permanently cease the use of the land for parking purposes.*
 - 2) *Reconstruct the rendered boundary wall to a height of 1.3m, and paint the external surface white, in the location represented by the solid purple line on the attached site location plan.*
 - The period for compliance with the requirements is:
Step 1: 2 days from the date this Notice takes effect;
Step 2: 3 months from the date this Notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal 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.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion in paragraph 5 of the Notice of the numbers 1 and 2 and the brackets following them and the words "Permanently cease the use of the land for parking purposes". It is also directed that in paragraph 6 of the Notice the words "Step 1", "Step 2" and "2 days from the date this Notice takes effect" shall be deleted. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Procedural matters

2. I have a duty to get the enforcement notice in order if I can do so without prejudice to the parties. The enforcement notice alleges the carrying out of operational development. However, Step 1 of the Notice requires that the use of the land for parking purposes should permanently cease. That use is one that would be incidental to the enjoyment of the dwellinghouse as such and would not amount to development. This requirement of the notice is unduly onerous and does not properly relate to the breach that has taken place. In any event, the fulfilment of Step 2 of the Notice, to construct a boundary wall

would preclude the use of the hardstanding for parking, and the continuing effect of the notice under s.181(3) of the Act, would make Step 1 redundant. I shall therefore delete Step 1 and vary the notice to reflect this.

Main Issue

3. The main issue is whether the matters alleged in the notice constitute a breach of planning control.

Reasons

4. The appellant's grounds of appeal suggest that the only development that has taken place involves the removal of a boundary wall. However, it is plain from the Council's photographs and from what I saw on my site visit that this is not the only work that has been carried out in constructing the car parking area. The front garden of the appeal site slopes down from the bungalow towards the front boundary. The level of the land where it met the front boundary was considerably higher than that of the footway, and thus the front boundary wall acted as a retaining structure.
5. Significant engineering works have been undertaken to remove earth from the raised garden to create a flat surface, and blockwork retaining walls, faced in red brick have been constructed to retain the newly exposed earth banks. Gravel has been laid on the flat surface to create a hardstanding.
6. The works carried out constitute engineering and building operations, and are works of operational development as defined in s.55 of the Town and Country Planning Act 1990 (as amended). Class F of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) permits development consisting of -
 - (a) 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
 - (b) the replacement in whole or in part of such a surface.
7. Thus, whilst the provision of a hard surface for an incidental use such as parking does not require express planning permission, the excavation works and the construction of retaining walls do not benefit from any such deemed permission under the Order, and therefore the whole of the development comprises a breach of planning control. Whether or not the hardstanding is actually used for the parking of cars is immaterial as far as the appeal under ground (c) is concerned.
8. Accordingly I find that the development enforced against has been carried out in breach of planning control and that the appeal on this ground fails.

Other matters

9. Four local residents have written to support the development being enforced against. Their comments all relate to the planning merits of the development, but as there is no appeal made under ground (a) and the application for planning permission deemed to have been made under s.177(5) of the Act has lapsed, I am unable to take these matters into account, as my consideration is confined to the narrow legal ground appealed against.

Conclusion

10. For the reasons given above, I conclude that the appeal fails, and that, subject to correction and variation, the enforcement notice is upheld.

JP Roberts

INSPECTOR