



Appeal Decisions

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2020

Appeal A: APP/P2114/C/19/3227082

Appeal B: APP/P2114/C/19/3227083

17 Priory Road, Carisbrooke, Isle of Wight PO30 5JU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr S Farrant (Appeal A) and Mrs C Farrant (Appeal B) against an enforcement notice issued by Isle of Wight Council.
 - The enforcement notice was issued on 14 March 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the creation of a vehicular access and creation of vehicular parking spaces by the removal of a boundary wall and the laying down of a non-porous hardstanding.
 - The requirements of the notice are: (I) To cease to use the unauthorised access in the approximate position coloured green on the attached plan to the notice marked A for the ingress and egress of vehicles. (II) To remove the hardstanding in the approximate location coloured green on the attached plan to the notice marked A. (III) To reinstate a boundary wall at a minimum height of 300mm to a maximum height of 1000mm (1 metre) in the approximate location marked blue shown on the attached plan to the notice marked B.
 - The period for compliance with the requirements is 1 month in respect of requirement (I) and 2 months in respects of requirements (II) and (III).
 - The appeals are proceeding on the grounds set out in section 174(2) (d) 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 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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Summary of Decisions

1. The appeals are dismissed and the enforcement notice is upheld with a variation.

Preliminary Matter

2. As the enforcement notice has been appealed on grounds (d) and (g) only, views were sought from the parties as to whether it would be necessary for me to visit the site. No objections to this course of action were received and I do consider that injustice to the parties would arise from determining the appeal on the basis of the written evidence before me, given the evidential onus rests with the appellants.

The ground (d) appeals

3. For the ground (d) appeals to succeed the onus is on the appellants to demonstrate, as a matter of fact and degree on the balance of probabilities,

that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. The latest date for the substantial completion of the works enforced against, namely the creation of a vehicular access and parking spaces by means of the removal of a boundary wall and laying of a non-porous hardstanding, must therefore be by 14 March 2015.

4. The appellant's assert that the boundary wall and some hedging was removed between April and September 2014 and have provided two aerial images which are said to clearly show this. However, from the quality and scale of imagery provided this cannot be deciphered and so these images do not demonstrate on the balance of probabilities that this was the case. However, a photograph dated 8 November 2014 does show the site with no front wall as well as the front garden area roughly levelled.
5. In January 2015 it is then asserted that the top layer of the ground was removed, and the area was levelled and hardcore placed. A photograph of a receipt for what is said to relate to the hardcore, dated 29 January 2015, has been provided by the appellants. The photograph of this itemised receipt is however partially obscured by the credit card receipt that is stapled to it and it is therefore not possible to ascertain with any precision what materials it relates to. Moreover, a receipt in itself, and the mere assertion that certain works were undertaken, does not demonstrate on the balance of probabilities that these works were undertaken at this time or that the said hardcore was used for the purposes of making a hardstanding at the front of the site. This evidence is therefore vague and ambiguous. Even a photograph which is said to have been taken in February 2015 fails to demonstrate on the balance of probabilities whether a hardstanding had been laid, given the angle of the photograph and presence of a skip which largely obscures views of the ground.
6. It is said by the appellants that it is therefore by January 2015 that the works were substantially complete. However, the evidence only demonstrates on the balance of probabilities that the wall and some hedging had likely been removed and the front of the site roughly levelled. There is then very little evidence to demonstrate on the balance of probabilities when the vehicular access enforced against was created and the front of the site used for the parking of vehicles, or then when the laying of a non-porous hardstanding was undertaken.
7. Furthermore, the Street View imagery provided by the Council demonstrates a marked difference in the appearance of the site between July 2016 and May 2017, when in the former there appears to be some hedging or other vegetation whilst in the latter the remaining boundary treatments have been removed and a concrete hardstanding laid across its entirety.
8. It has therefore not been demonstrated as a matter of fact and degree on the balance of probabilities that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. Accordingly, the appeals on ground (d) must fail.

The ground (g) appeals

9. The appellants contend that the time given to comply with the requirements of the enforcement notice are too short and have requested 3 and 6 months respectively.

10. There is very little evidence to support extending the period for compliance. The Council has however highlighted the difficulties posed by the current pandemic. The timeframe associated with this is however unknown. In light of this, I consider it appropriate to extend the period for compliance with all requirements of the enforcement notice to 3 months, noting also that the Council has powers under section 173A(1)(b) of the Act, albeit that would be a subsequent matter which is entirely for them.
11. The appeals on ground (g) therefore succeed to this limited extent.

Formal Decisions – Appeals A and B

12. It is directed that the enforcement notice be varied by:
- substituting *3 months* as the period for compliance with all its requirements.
13. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR