



Appeal Decisions

Site visit made on 25 June 2019

by K R Seward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 28 July 2020

Tile Cottage, Hammonds Green, Framfield, East Sussex

Appeal A: APP/C1435/C/18/3207664

Appeal B: APP/C1435/C/18/3207665

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Miss Debra Cleaver.
 - Appeal B is made by the Executors of Mr Toby Cruse (deceased).
 - The appeals are against an enforcement notice issued by Wealden District Council.
 - The enforcement notice was issued on 28 June 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of wall, piers, railings and gates ("the Works") in the approximate position shown by a green line on the plan attached to the notice.
 - The requirements of the notice are:
EITHER:
 - (i) Demolish, dismantle and remove the Works from the Land and break up and remove any foundations thereof.
 - (ii) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with requirement (i) above.OR:
 - (iii) Reduce the height of the Works to a height not exceeding 1 metre at any point along the length of the Works.
 - (iv) Remove the metal gates and their fixings to the adjacent pillars at the point marked 'X' on the plan attached to the notice, and break up and remove all block paving and hard surfacing in that area.
 - (v) Replace the hedgerow that has been removed at the point marked 'Y' on the plan attached to the notice to facilitate the Works with plants of native species and maintain the same until it is established, to prohibit any use by motor vehicles of the access at that location.
 - (vi) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with requirements (iii), (iv) and (v).
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f)&(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 applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

Appeals A and B

1. It is directed that the enforcement notice is varied by:

- (i) the deletion of the words "and break up and remove all block paving and hard surfacing in that area" in paragraph 5.(iv)

- (ii) the deletion of paragraph 5.(v).
 - (iii) re-numbering paragraph 5.(vi) as 5.(v).
2. Subject to the variations, the appeals are dismissed and enforcement notice is upheld.

Procedural Matters

3. A planning application for the development now enforced against was dismissed on appeal on 4 June 2018¹. The enforcement notice follows that decision.
4. The second appellant sadly passed away after the appeal was lodged. Appeal B continues on behalf of the estate.

Reasons

The appeals on ground (f)

5. The enforcement notice concerns the erection of walls, piers, railings and gates at the frontage of Tile Cottage. The notice is drafted to give the option of either complete removal of the unauthorised works or a reduction in their height and removal of the metal gates with reinstatement of a hedge.
6. The ground of appeal is that the steps required by the notice to be taken are excessive.
7. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).
8. Unfortunately, the Council does not identify which of these two purposes it seeks to achieve. By giving the option to reduce the height of the works rather than their complete removal, it appears that the Council is concerned with remedying the injury to amenity. That is consistent with the reasons given for issuing the notice which describe the development as being visually harmful within the rural landscape and not conserving or enhancing the adjoining conservation area. Thus, I consider that the notice seeks to achieve the purpose of section 173(4)(b).
9. There is no ground (a) appeal and deemed planning application for the planning merits of the development to be considered. Therefore, the presence of other high pillars, gates and walls in the vicinity can have no bearing on my decision.
10. I have considered the possibility of planting in front of the development as suggested by the first appellant as an alternative to demolition. There is very little space for planting where the wall abuts the footway. Even if planting is possible, attempts to conceal the front boundary treatment in this manner are unlikely to be effective to address the harm arising from its height, design, colour and form. That is particularly so taking account of the prominence of the development from public vantage points and proximity to the adjoining

¹ Appeal ref: APP/C1435/D/18/3192981

conservation area. I am not satisfied that this proposal offers a satisfactory solution nor would changes to the brickwork given the scale and form of the development.

11. Although not raised in the appeals, I have a duty to ensure that the enforcement notice is in order and so I queried with the Council the purpose of the fourth and fifth requirements of the notice. These include removal of block paving and hard surfacing and for a replacement hedgerow "to prohibit any use by motor vehicles of the access at that location". In its submissions the Council also referred to the unauthorised "additional vehicular access". Yet, the notice does not allege the unauthorised formation of an access. That may have occurred in consequence of the unauthorised works, but the notice is confined to the operational development that has taken place.
12. Whilst a notice can require removal of works that facilitate a breach, the creation of an access is not facilitating works. It would usually amount to engineering operations. The Council confirmed that it takes no issue with the creation of the second vehicular access. Its concern relates to the construction of the wall and gates.
13. Therefore, the requirement within paragraph 5.(iv) of the notice to break up and remove all block paving and hard surfacing in the area marked 'X' on the enforcement plan is excessive. It goes beyond remedying the specific breach identified in the notice. Similarly, the wording in paragraph 5.(v) is superfluous where it seeks to prohibit any use by motor vehicles of the access.
14. A notice can properly require reinstatement of the property to its condition prior to the breach taking place. This could include replacement of the hedgerow on a like for like basis if it was removed to facilitate the operational development attacked by the notice.
15. The way that the notice is drafted there is no obligation to reinstate the hedgerow if opting to comply by demolishing the development in its entirety. It is only a requirement to replace the hedgerow if the alternative option is selected and the wall, piers, etc are reduced in height. When I queried this inconsistency in the requirements with the Council it indicated that it wishes to see the hedgerow reinstated under both options, but that is not what the notice says. If there is an error, I cannot correct it by adding a requirement in to the first part of paragraph 5. as it would make the notice more onerous. The Council did not wish to withdraw and reissue another notice.
16. If the hedge needs to be reinstated to remedy the injury to amenity, then it would be expected for provision to be included in both options. As there is no provision for a replacement hedgerow in the first option, it seems to me to be excessive for such a measure to be included in the alternative option. In effect the alternative is far more onerous without reasonable justification.
17. I shall vary the notice to remove the reference to block paving and hard surfacing in paragraph 5.(iv) and delete paragraph 5.(v). Minor consequential amendments will be needed to the number of paragraph 5.(vi)
18. To that limited extent the appeal on ground (f) succeeds.

The appeals on ground (g)

19. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed.
20. The effect of the appeal is to stop the clock. The notice only takes effect on the date of this appeal decision and that is the date when the compliance period starts. The Council advised that no planning application has been submitted for alternative development to that enforced against.
21. I recognise the extremely difficult personal circumstances that have arisen since submission of the appeals which may well have impacted upon whether another planning application being progressed. I further sympathise with the financial burden of undertaking works in compliance.
22. Nevertheless, no alternative period has been suggested. The notice allows for a further 6 months to comply which still seems to me to be a fair and proportionate period bearing in mind the circumstances.
23. The ground (g) appeal fails.

Conclusions

24. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the injury to amenity. I shall vary the enforcement notice prior to upholding it. The appeals on ground (f) succeed to that extent.

KR Seward

INSPECTOR