



Appeal Decision

Site visit made on 12 August 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2020

Appeal Ref: APP/D1265/C/19/3243095

Land known as April Cottage, Bozley Hill, Cann, Shaftesbury SP7 0BL

- 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 Owain Hughes against an enforcement notice issued by Dorset Council.
 - The enforcement notice was issued on 15 November 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the carrying out of operational development resulting in the material widening of a pedestrian access forming a vehicular access onto a highway ("Unauthorised Development") the approximate position of which is shown with a red arrow on the attached plan to the notice.
 - The requirements of the notice are: I. remove from the Land all aggregate laid on the slope back from the tarmac edge of the A350 classified road to where the original pedestrian gate used to exist, and; II. remove all existing fences and fence posts erected as part of the Unauthorised Development, and; III. reinstate all fences, fence posts and a pedestrian gate aligned in the same way as those that existed at the access prior to the commencement of the Unauthorised Development as shown in the photograph enclosed with this notice (pedestrian gate 2009). The fences either side shall be set back 0.75 metres from the road edge at the full width of the access at this point and shall run at an inward angle up the slope to two further fence/gate posts set 1.5 metres back from the road edge 1.22 metres apart for pedestrian access at this point, and; IV. the fencing and gates in requirements II and III above shall be stained dark brown in colour.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (f) 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.
-

Summary of Decision

1. The appeal is dismissed and the enforcement notice upheld with a correction.

Preliminary Matters

2. The planning merits of the development enforced against, namely a vehicular access, are not before me as a ground (a) appeal has not been pleaded. The appeal is therefore largely confined to legal grounds. Accordingly, matters such as highway safety or the petition in support of the appellant are not relevant considerations to my assessment. Neither are the appellant's concerns about how he considers the matter has been handled by the Council.

The Enforcement Notice

3. Requirement III. of the notice identifies the photograph enclosed with the notice as 'pedestrian gate 2009' when it is actually annotated as 'Pedestrian access 2009.' Injustice to the parties would however not arise from making this correction, which I shall do in my formal decision below.

The ground (c) appeal

4. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
5. The appeal site was previously served by only a pedestrian access. The evidence before me demonstrates on the balance of probabilities that a vehicular access was formed by the previous owner of the site by means of the removal of the pedestrian gate, levelling the ground, and the erection of new fence panels and posts. This had the effect of widening the pedestrian access to form a vehicular access.
6. The appellant purchased the appeal site in January 2019 and then undertook some further works, which included the addition of hardcore for more parking/turning space and the removal of some fencing which he did not consider served any purpose.
7. However, the works enforced against, namely a material widening of a pedestrian access forming a vehicular access onto a highway, amounts to a building operation, and given the extent of the original works undertaken are an operation normally undertaken by a person carrying on business as a builder. It therefore follows that the works enforced against are development for the purposes of Section 55 of the Town and Country Planning Act 1990, as amended.
8. No planning permission has been brought to my attention for the vehicular access. The Council advise that the highway is a classified road, which is not disputed by the appellant. It therefore follows that the vehicular access cannot be permitted development as it would contravene Schedule 2, Part 2, Class B of the Town and Country (General Permitted Development) (England) Order 2015, because it amounts to the formation, laying out and construction of a means of access to a highway which is a classified road.
9. The appellant has therefore not demonstrated on the balance of probabilities that there has not been a breach of planning control.
10. The appeal on ground (c) consequently fails.

The ground (d) appeal

11. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, 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 material widening of the pedestrian access to form a vehicular access would thus be 15 November 2015.

12. The Council issued a Planning Contravention Notice (PCN) to the previous owner of the appeal site. A response is dated 1 May 2019, which states that the works to widen the pedestrian access were undertaken in December 2016.
13. The Council however consider, based upon other evidence, including from occupiers of neighbouring properties, that the works were undertaken in late 2017/early 2018. Either way, this is quite some time after November 2015 and so the vehicular access enforced against cannot be immune from enforcement action owing to the passage of time.
14. The appellant advises that the previous owner purchased the property in 1979 and that it was then sold to him with off road parking. He then undertook some further works, which I have already outlined. However, whilst the appellant purchased the property and undertook works on this basis, it does not provide evidence to demonstrate 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, only that the vehicular access existed at the time of his purchase in January 2019.
15. The appellant says that the previous owner parked cars off the road in the drive/garden well before 2009. However, the only vehicular access to the property is the one before me, and a photograph provided by the Council, which is said to have been taken in 2011, shows only a pedestrian width access. This undermines the appellants version of events in this regard and so I afford this very limited weight.
16. The appellant has therefore not discharged the necessary burden of proof to demonstrate on the balance of probabilities that the material widening of the pedestrian access to form a vehicular access was substantially complete by 15 November 2015.
17. The appeal on ground (d) consequently fails.

The ground (f) appeal

18. The purpose of the enforcement notice is clearly to remedy the breach of planning control. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives.
19. The crux of the appellants argument is that he purchased the property with the vehicular access and has undertaken only minor works since. He was not made aware of any planning breaches at the time of purchase. However, whilst I have sympathy for the appellant, these matters are not relevant to whether the requirements of the notice are excessive.
20. It is however said that the fence supports a mound of earth and this would require a significant amount of work to alter. However, whilst I could see during my site visit that there is earth behind the fence, it is in my view necessary for the fence to be removed and the original alignment reinstated in order to remedy the breach of planning control; thereby returning the land to its condition prior to the unauthorised vehicular access.
21. As no other lesser steps are before me, the appeal on ground (f) consequently fails.

Overall Conclusion

22. For the reasons given above I conclude that the appeal should not succeed. I shall therefore uphold the enforcement notice with a correction.

Formal Decision

23. It is directed that the enforcement notice be corrected by:

- substituting the words “(*Pedestrian access 2009.*)” for the words “(*pedestrian gate 2009.*)” in requirement III of the notice.

24. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR