
Appeal Decisions

Site visit made on 8 September 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal A Ref: APP/K3605/C/20/3249021

Appeal B Ref: APP/K3605/C/20/3249022

Land being The Oaks, The Causeway, Claygate, Esher KT10 0NE

- The appeal is 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 Mr Craig Walker and Appeal B is made by Mrs Penelope Walker against an enforcement notice issued by Elmbridge Borough Council.
 - The enforcement notice was issued on 19 February 2020.
 - The breach of planning control as alleged in the notice is within the last four years and without planning permission, the unauthorised erection of a front boundary fence and a car port.
 - The requirements of the notice are:
 - (a) Permanently remove the fencing and the concrete posts from the land;
 - (b) Permanently remove the car port structure from the land;
 - (c) Permanently remove from the land any resultant waste from complying with steps (a) and (b).
 - The period for compliance with the requirements is two months.
 - The appeals are proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matters

2. The appellants have requested that a decision in relation to the car port not be made until after a decision is made regarding the fence. While I could have made a split decision if I had found in favour of the appellants in relation to one of the elements of the development under the ground (c) appeal, it is not possible to delay part of my decision.
3. The appellants state that the enforcement notice is invalid because the Council officers and Councillors did not have the full facts in front of them when deciding to take enforcement action. However, in order for the enforcement notice to be invalid there would have to be defects within the notice itself that I could not correct without causing injustice to the parties. That is not the case in this instance.

The appeals on ground (c)

4. The ground of appeal is that the matters stated in the notice which give rise to the alleged breach of planning control, did not constitute a breach of planning control. The burden of proof is on the appellants, and the standard of proof is

the balance of probabilities. Matters relating to the merits of the case, including the presence of other fences in the area, and the handling of the case by the Council, are not relevant considerations.

Fence

5. A front boundary fence was in place when the property was purchased in 2008, stated by the appellant to have had a height of approximately 1.85 metres. New timber panels fixed to new concrete gravel boards and new concrete fence posts have been installed. The end posts of the original fence have been retained as well as the original post holes. The fence is stated to be of no greater height than the previous fence.
6. Class A Part 2 Schedule 2 of the GPDO¹ sets out that the erection, construction, maintenance, improvement or alteration of a gate, fence or other means of enclosure is permitted development. Paragraph A.1 sets out the circumstances when such development is not permitted. In particular, in the case of a fence constructed adjacent to a highway used by vehicular traffic if the fence exceeds 1 metre in height (a)(ii), as is the case in this instance. Under A.1(c) the work is not permitted development if the height of the fence maintained, improved or altered would, as a result of the development, exceeds its former height. The appellants' case is that the fence has been repaired rather than replaced, and as it does not exceed its former height planning permission is not required.
7. However, the original fence has been almost entirely removed and replaced, with only the end posts of the old fence remaining. It is not the case that discrete parts of the fence have been replaced or repaired. It goes far beyond what could reasonably be considered to be the maintenance, improvement or alteration of an existing fence, and is a new fence. It exceeds one metre in height and is adjacent to a highway used by vehicular traffic. Consequently, planning permission is required.

Car port

8. The appellants do not dispute that the car port is a replacement structure, on a similar siting to a previous structure that had become dilapidated and was removed. The car port is sited in the front garden of the property, between the principal elevation of the dwelling and the front boundary of the site.
9. Schedule 2 Part 1 Class E of the GPDO sets out the permitted development right for the erection of buildings etc incidental to the enjoyment of a dwellinghouse. Paragraph E.1 sets out the circumstances in which such development is not permitted. Paragraph E.1(c) states that development is not permitted if any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.
10. Although the car port is a replacement for the original structure, it is a new building that would only be permitted development if it complied with the limitations of Class E. As the car port is located in front of the front elevation of the house, which is the principal elevation, it does not benefit from the Class E permitted development right. Accordingly, planning permission is required.

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

Conclusion in relation to Ground (c)

11. For the reasons set out above, the appeals on ground (c) fail.

The appeals on ground (f)

12. The ground of appeal is that the steps required by the notice to be taken, exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
13. The appellants state that they are willing to find appropriate steps to overcome the Council's objection, for example by adjusting the colour of the car port to match that of a neighbouring property, or planting climbing plants to cover the car port. However, as there is no appeal on ground (a) there is no deemed planning application to consider. I am therefore not able to consider whether any harm caused by the fence and the car port could be overcome by additional measures through planning conditions, as suggested by the appellants.
14. The notice requires the removal of the development in its entirety, and therefore the purpose of the notice is to remedy the breach of planning control. Lesser steps would not remedy the breach and there is no obvious alternative to the requirements of the notice. The appeals on ground (f) therefore fail.

Conclusion

15. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

N Thomas

INSPECTOR