The Planning Inspectorate

Appeal Decisions

Site visit made on 8 September 2020

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9TH OCTOBER 2020

Appeal A: APP/X4725/C/20/3250101
Appeal B: APP/X4725/C/20/3250102
Land at 27 Brookfield Avenue, Castleford WF10 4BJ

- 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 David Prince (Appeal A) and Mrs Elizabeth Prince (Appeal B) against an enforcement notice issued by City of Wakefield Metropolitan District Council.
- The enforcement notice was issued on 2 March 2020.
- The breach of planning control as alleged in the notice is without planning permission, an unauthorised development of hard-standing to rear on the land.
- The requirements of the notice are the demolition and removal from the site of the hard standing to rear.
- The period for compliance with the requirements is 3 months.
- The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

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

   the deletion of the words "hard-standing" and the substitution of the words "supporting side walls, store and hard-standing" in Section 3

   the deletion of the words "hard-standing" and the substitution of the words "supporting side walls, store and hard-standing" in Section 5

   the deletion of 3 months and the substitution of 6 months as the time for compliance.

2. Subject to the correction and variation, the appeals are dismissed and the enforcement notice is upheld.

Preliminary matters

3. The appellant has confirmed that a ground (a) appeal has not been pursued as a S78 appeal against the Council's refusal of planning permission for the development has been dismissed[1]. The planning merits of the development are not therefore before me for consideration. Furthermore, the appellant confirms that a ground (c) appeal has not been pursued as the development is not permitted development.

4. The appellant has submitted a further planning application for an amended scheme relating to this development. I have not had sight of the details of the amended proposal and am not aware of whether the Council has made its

[1] APP/X4725/W/19/3238719

decision as to the acceptability of that scheme. The breach of planning control could not therefore be remedied by making the development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the Land[2]. However, S180 provides that a grant of planning permission would override the requirements of a notice, so far as they are inconsistent with that planning permission.

5. Neighbouring occupiers have raised issues relating to the planning merits of the development. While the appellant has responded to these issues, they could only be considered in respect of a ground (a) appeal, which I have already confirmed is not before me.

The notice

6. S173(1)(a) of the Act[3] requires that the notice shall state "the matters which appear to the local planning authority to constitute the breach of planning control" and it must also identify whether the breach represents operational development, a material change of use or failure to comply with a condition. In this case, the notice confirms that the breach amounts to carrying out operational development without the required planning permission. The notice identifies the operational development to be "an unauthorised development of hard-standing to the rear of the Land".

7. Due to the sloping nature of the Land, the hard-standing is supported by side walls and, where an end supporting wall would be expected to be found, access doors are provided. Part of the void beneath the hard standing is utilised as a domestic store. The provision of the supporting side walls and store facilitate the provision of the hard standing. I concur with the Council[4] that the store is incidental to the creation of the hard standing and the provision of the supporting side walls, store and hard-standing represent one operation in planning terms.

8. The allegation should identify the extent of the whole operation that represents the breach of planning control. Had the Land been flat, describing the breach as the provision of "hard standing" would have been accurate. Given the significant slope of the Land in this instance, the hardstanding could not be provided without the provision of the supporting side walls and store. For clarity, the allegation should be corrected to include the supporting side walls and store.

9. It follows that the wording of the requirements should be similarly corrected to avoid confusion. I am satisfied that injustice would not be caused by my correction of the notice as the appellant's and the Council's cases reference the store as being required to be removed, despite it not being implicitly identified in the breach.

Ground (f)

10. Having regard to the requirements of the notice, set out in Paragraph 5, its purpose is to remedy the breach of planning control, set out in the corrected allegation. To succeed on ground (f) the appellants must show that the requirements of the notice exceed what is necessary to remedy the breach.

[2] S173(4)(a) of the Town and Country Planning Act 1990 (as amended)
[3] Town and Country Planning Act 1990 (as amended)
[4] Paragraph 6.1.3 of the Council's Appeal Statement

11. The appellants contend that the part of the hard-standing not exceeding 300 mm above the mean ground level and the store benefit from express consent under terms set out in the GPDO[5]. As such, only the section of hard-standing coloured purple on the plan entitled "Long Section A-A proposal as built" would need to be removed to remedy the breach of planning control.

12. The specific section of the GPDO to which the appellant alludes, is not identified, although the Council suggest that it is Class F, Part 1 of Schedule 2. The Council, however, also highlights the relevance of Section 2(2), which seeks to restrict the height of developments in respect of sloping land. Furthermore, the Council advise that the provision of the store would not have been permitted development under Class E as a raised platform is incorporated within the development.

13. Regardless of which section of the GPDO may be considered relevant, S173(4) of the Act, confirms that the notice can require the breach to be remedied "by restoring the land to its condition before the breach took place". The corrected notice requires the demolition and removal of the side walls, store and hard-standing, which would accord with the land being restored to its condition before the development took place. S173(5)(a) confirms that a notice can require the "removal of any buildings or works" that facilitate the breach of planning control. I have already found above that the supporting walls and store facilitate the provision of the hard-standing and as such the requirements of the notice comply with S173(4) and (5) of the Act.

14. The requirements to demolish and remove the supporting side walls, store and hard-standing are necessary to remedying the breach of planning control. The requirements of the notice are not excessive and the appeals on ground (f) should not succeed.

Ground (g)

15. The appellants advise that discussions are on-going with the Council with a view to securing permission or a certificate of lawful permitted development for an amended scheme relating to the supporting side walls, store and hard-standing. Furthermore, these discussions and the submission of the relevant application has been delayed due to the Coronavirus Pandemic. Undertaking any subsequent approved alterations to the development could also be hindered by Covid-19 restrictions. The 3 months compliance period is too short, and a period of 18 months is requested.

16. The Council consider the 3 months compliance period to be appropriate but has suggested that a 6 months period would be a reasonable extension.

17. It has been confirmed that the further application referred to by the appellants has been submitted for the Council's consideration. I also acknowledge that Covid-19 restrictions could affect the ability of the appellants to undertake the works necessary to comply with the requirements of the notice in a timely manner. A period of 18 months would be excessive, and tantamount to a temporary planning permission. I agree with the Council that a period of 6 months would provide a reasonable time to comply with the notice. I am satisfied that no injustice would be caused to the appellant or Council by the extension of the compliance period.

[5] Town and Country Planning (General Permitted Development) Order 2015 (as amended)

18. The appeals on ground (g) succeed, to this limited extent.

Overall conclusion

19. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the notice with corrections and a variation.

M Madge

INSPECTOR