
Appeal Decision

Site visit made on 22 September 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2020

Appeal Ref: APP/K1935/C/20/3251206

Land at Watercress Close, Coopers Close and Walnut Tree Close, Stevenage SG2 9TN

- 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 SER Homes Ltd against an enforcement notice issued by Stevenage Borough Council.
 - The enforcement notice was issued on 1 April 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of 2m high hoarding (approximate) at the entrances of the site from Watercress Close and Coopers Close within at least 5.1m approximately of the highway edge, and considered by the Local Planning Authority as being adjacent to a vehicular highway. Furthermore, the total enclosure of the land by hoarding at the three entrances, including off Walnut Tree Close, restricting access by members of the public to an area of privately owned public open space, as expressed in the original planning consent for the residential estate (ref: 87/2/0053/87) and contrary to Policy NH6 of the Stevenage Borough Local Plan 2011-2031 (July 2019) for the general protection for open space.
 - The requirements of the notice are: Remove all elements of the three areas of hoarding and open up all entrances/exits, namely off Watercress Close, Coopers Close and Walnut Tree Close to allow full access to the open space by members of the public.
 - The period for compliance with the requirements is 2 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion of the second sentence in paragraph 3 of the notice. Subject to this correction the appeal is allowed and the enforcement notice is quashed.

Enforcement Notice

2. The first paragraph of the notice states that it appears to the Council that there has been a breach of planning control under section 171(1)(a) of the Act. In other words, the alleged breach is carrying out development without the required planning permission. However, the alleged breach in paragraph 3 also refers to a contravention of the original planning consent for the residential estate (ref: 87/2/0053/87). The Council has subsequently confirmed that the notice is directed solely at operational development and no material change of use or breach of condition is alleged. In the interests of clarity, I shall correct the notice by deleting the second sentence of paragraph 3 which references the original planning consent and includes information which more relates to the reasons for issuing the notice, and which have also been included in paragraph

4 of the notice. I have taken into consideration the Council's comments relating to this matter. However, the correction would not alter the purpose of the notice and there would not therefore be any injustice to either the Council or the appellant by my making that correction.

Appeal on ground (c)

3. The ground of appeal is that the matters alleged in the notice, namely the erection of 2m high hoarding at site entrances at Land at Watercress Close and Coopers Close, do not constitute a breach of planning control. The appellant's case is that the fencing is not adjacent to a highway and is therefore permitted development under the provisions of Class A, Part 2, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order, 2015 as amended (GPDO). Furthermore, the Land is in private ownership and there are no planning conditions which restrict the use of the Land, or that require it to be accessible to the public.
4. The Council has confirmed that there are no planning conditions restricting the use of the Land. However, they consider the 2m high hoardings that have been erected to be adjacent to a highway used by vehicular traffic. The Council do not consider the hoardings to be permitted development as they would conflict with Class A.1 (a) (ii) of the Part 2, Schedule 2, Article 3 of the GPDO.
5. Class A, Part 2, Schedule 2, Article 3 of the GPDO provides for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Class A.1 states that development is not permitted by Class A if:
 - (a) The height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after carrying out the development, exceed-
 - (i) For a school,
 - (ii) In any other case, 1 metre above ground level.
6. At the time of my visit the hoarding panels had been removed from the Land. However, the posts upon which they had been affixed were still in place and I was clearly able to see where the hoardings had been sited. There is no dispute between the main parties that the hoardings the subject of the alleged breach were over one metre in height. Therefore, in order to benefit from any planning permission granted by the GPDO as set out above, the hoarding must not be constructed adjacent to a highway used by vehicular traffic, and the issue turns of an interpretation of the term 'adjacent to'.
7. The description of the alleged breach of planning control states that the hoardings are within at least 5.1m of the highway edge. The Council Officer's Report states that the hoardings are between 1.5m and 2m in distance from the highway verge on Watercress Close and Coopers Close, whilst the appellant's statement of case gives distances of 6.2m and 5.1m respectively. The appellant states that case law has established that a reasonable approach to what 'adjacent to' means is being 2 metres of the said highway, whilst the Council state that case law and appeal decisions have generally taken a view point that if the boundary treatment or enclosure in question to the first line of boundary on a site it would be classed as being adjacent to a highway. That

- said, neither party has directed me to any specific appeal decision or judgement.
8. The GPDO gives no definition of 'adjacent to' and leaving this to be decided having regard to its normal meaning. The normal everyday dictionary definition of adjacent is 'being near or close'. What constitutes 'adjacent to' is therefore a matter of fact and degree and is dependent upon the circumstances of the case.
 9. In the case of the hoarding that had been erected at the site entrance to the Land at Watercress Close, from the evidence of the posts still in the ground, the hoarding that had been erected was at least three metres away from the highway edge (the kerb line). In this location, at the head of a residential cul-de-sac, there is no pavement. There is a lamppost situated approximately a metre away from the kerb, whilst hedgerows and planting delineate and partially enclose the frontages of the neighbouring properties and extend well beyond of the line of hoarding. Taking into account the distance of the hoarding from the kerb and its relationship to the adjacent means of enclosure formed by hedges and planting, the hoarding in this location is sufficiently distant from the highway that as a matter of fact and degree it is not adjacent to a highway used by vehicular traffic. It is therefore permitted development for the purposes of Class A, Part 2, Schedule 2 and is granted planning permission by Article 3 of the GPDO.
 10. In the case of the hoarding that had been erected at the site entrance to the Land at Coopers Close, although the hoarding itself had been removed, I was able to see the position of the two posts that had been constructed to support it. Again, at the head of this cul-de-sac there is no pavement and the highway which used by vehicular traffic is delineated by the kerb line. The posts are set back more than 2m from the kerb and the neighbouring properties have hedges, at least 2m high, which partially enclose their frontage and extend up to the kerb line and beyond the line of the hoarding. Therefore, taking into account the distance of the hoarding from the kerb and its relationship to the adjacent means of enclosure formed by hedges and planting, the hoarding is sufficiently distant from the highway that as a matter of fact and degree it is not adjacent to a highway which is used by vehicular traffic. It is therefore permitted development for the purposes of Class A, Part 2, Schedule 2, Article 3 of the GPDO.
 11. I note the representations made by local residents and the Council, but planning merits are not relevant to and cannot be considered in an appeal on ground (c), which is concerned only with whether the matters alleged constitute a breach of planning control.

Conclusion

12. For the reasons given above, I conclude that the appeal on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting a breach of planning control. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (f) and (g) do not need to be considered.

Elizabeth Pleasant

INSPECTOR