



Appeal Decision

Site visit made on 21 September 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2020

Appeal Ref: APP/T2215/C/20/3246718

Land at Dale Villa, Dale Road, Southfleet, Kent DA13 9NX

- 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 Mrs Mandy Dunn against an enforcement notice issued by Dartford Borough Council.
 - The enforcement notice, numbered 16/00114/ENF, was issued on 12 January 2020.
 - The breach of planning control as alleged in the notice is the erection of two brick piers, front and side boundary wall, in the approximate position shown on the attached plan.
 - The requirements of the notice are:
 - (i) Remove brick piers, shown marked as A & B on attached plan together with the front boundary wall shown as hatched on the said plan.
 - (ii) Reduce the side boundary wall shown marked as C-C on the attached plan to a height of no more than 1 metre.
 - (iii) Remove from the land all building materials and rubble arising from compliance with the first and second requirement above and restore the land to its condition before the breach took place.
 - (iv) Dispose of the waste arising to an appropriate facility.
 - The period for compliance with the requirements is 90 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (e) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matters

2. During the course of the appeal the appellant made representations that she had sent additional evidence, in addition to that already set out in the Enforcement Notice Appeal Form. Although given the opportunity to resubmit this evidence, together with confirmation of the date it was sent to the Planning Inspectorate, this has not been forthcoming. The appeal has therefore been considered on the basis of the submissions received.

Reasons

Ground (e)

3. An appeal on ground (e) is that the enforcement notice has not been served as required by s172. Ground (e) is known as one of the legal grounds where the burden of proof lies with the appellant.
4. It is the appellant's case that as Mr Scott Dunn submitted the associated planning applications to the Council, he should have been served with a copy of the enforcement notice. In contrast the Council consider that the notice has been correctly served on all interested parties as required under s172.
5. S172(2) provides, that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the LPA, is materially affected. s176(5) goes on to confirm that where a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact, if neither the appellant nor that person, has been substantially prejudiced by the failure to serve.
6. The evidence indicates that no Planning Contravention Notice, or Requisition for Information, was issued by the Council to ascertain the relevant occupiers and other persons with an interest in the land, prior to the issue of the notice. The enforcement notice was served on Mandy June Dunn (as she appears on the Land registry documents as the proprietor), Barclays Bank UK PLC (Mortgagee) and Kent County Council (due to potential encroachment onto highway land). Nonetheless, whether or not Mr Dunn appears on the Land Registry, it is apparent from the appellant's appeal form, that Mr Scott Dunn and Mrs Mandy Dunn both reside at the appeal property. He is therefore an occupier of the property. I have no evidence about the nature of that occupation, or the degree of control he has over the property. Nevertheless, as an occupier of the premises, I consider that he should have been served with a copy of the notice.
7. Whether or not he was served, s174(1) provides that any person having an interest in the land, may appeal against the enforcement notice, whether served with a copy or not. From the Council's evidence it is clear that Mr Dunn was present when the notice was served by Council officers at the property. He was therefore aware of its existence. Furthermore, he has acted as the appellant's agent for the purposes of this appeal. In any event, the notice has been appealed within the prescribed timescales and this has protected his interests.
8. For the above reasons, I find that on the balance of probability, there is no evidence that anyone has been substantially prejudiced by the failure to serve them with a copy of the notice. Accordingly, the appeal on ground (e) fails.

Ground (a) – The deemed application.

9. I have had regard to the reasons why the Council issued the notice and consider that the main issue is the effect of the development on highway safety.
10. The appeal site lies within the village of Southfleet and within the Southfleet Conservation Area (SCA). The area is characterised by traditional dwellings

clustered around the crossroads with a primary school, village hall and public house. The appeal property is a two storey dwelling set within a modest frontage, which includes off street parking and landscaping.

11. The front boundary is marked by a substantial brick wall, set immediately onto the carriageway. It wraps around the boundary, where there is a parking bay to the south of the site, which is understood to be used by a neighbouring property. There are two large brick pillars flanking the vehicular access, although at the time of my visit no gates had been fitted.
12. At this point Dale Road is a narrow rural road with no footpath or streetlights. My visit was carried out during the early morning and it was clear that the highway is well used by both vehicles and pedestrians, including young children. The lack of a footpath means that pedestrians have to walk very close to the edge of the carriageway to make room for passing vehicles. Their position in the road, means that they are less visible than they would be if they were less constrained and walking on a footpath.
13. It was clear from my site visit, that the wall and the two pillars significantly reduce the visibility for drivers of vehicles leaving the site. The visibility is obstructed in both directions, but this is more apparent when exiting the site and looking to the south. This poor visibility is also evident when exiting the neighbours parking space.
14. I acknowledge the appellant's assertion that the wall replaces a structure that was in a poor condition, and the sequence of events that have led to this appeal. My attention has also been drawn to similar developments in the locality. However, I have not been provided with the location, or the planning history of these sites and how they relate to the appeal site. In any event, I have to determine this appeal on its own planning merits, and their presence do not overcome the serious highway safety concerns that I have.
15. Drawing the above points together, I acknowledge that there may not have been any incidents or accidents to date. However, to my mind, this does not diminish the risk of future collisions. Consequently, and for the above reasons, I find that the development unacceptably affects the safety of both pedestrians and vehicles using the highway. It is therefore contrary to policies DP2, DP3, DP4 and DP5 of the Dartford Development Policies Plan (2007). In summary these policies make clear that development will not be permitted where there would be unacceptable impacts on the safety of pedestrians, cyclists and other road-users.

Other matters

16. I am very mindful of the appellant's personal circumstances and the effect that this decision may have. I have also considered the Human Rights issues that may be pertinent to this appeal. However, the decision I have reached is both proportionate and necessary to overcome the unacceptable harm to highway safety, caused by the unauthorised development.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR