



Appeal Decision

Site visit made on 29 September 2020

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 19 October 2020

Appeal Ref: APP/N1730/C/20/3248188

Land at 15 Twisel Thorne, Church Crookham, Fleet, Hampshire GU52 0YT

- 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 Peter Gardner against an enforcement notice issued by Hart District Council.
 - The enforcement notice was issued on 3 February 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the change of use and enclosure of amenity land shown hatched black on the attached Plan B to use as residential garden land.
 - The requirements of the notice are:
 1. Cease the unauthorised use of the land.
 2. Remove the fence marked A-B and B-C from the amenity land.
 3. Remove from the amenity land all the residential paraphernalia, including but not limited to, plant pots, residential wheelie bins and shingle.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - Deleting 'Twissel' and substituting 'Twisell' in paragraph 2; and
 - Deleting one month and substituting two months as the period for compliance.
2. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The street name is spelt incorrectly in paragraph 2 of the notice. I have spelt it correctly in the banner heading above and I am able to correct the notice to remedy this typographical error without causing injustice to the appellant or the Council.
4. The appeal was made on ground (f). However, the appellant has raised issues which amount to a hidden appeal on ground (c). The Council has had an opportunity to consider the representations made by the appellant and I will therefore determine the appeal as proceeding on both grounds.

Ground (c)

5. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The onus is on the appellant to make his case and the relevant test is 'the balance of probabilities'.
6. The appellant states the deeds to his house show the land is marked as his property and that he wasn't aware of the term 'amenity land'. However, even if the land is within the appellant's ownership, it does not necessarily follow that the lawful use of the land is residential or domestic use.
7. The Council state that the development was built under planning permission reference: HDC 20587, granted in 1991, and that the plans show the area to be landscaped and classed as 'amenity land', meaning an area that is landscaped for the benefit and enhancement of the whole estate. On this basis the Council say that the fenced off land lies outside the residential curtilage of No 15 Twisell Thorne and that there has been a change of use of the land from public open space to residential use.
8. The curtilage of the house is not relevant to this appeal because the term 'curtilage' simply describes an area of land that has an intimate association with a building; it does not describe what the use of the land might be. For this hidden ground (c) appeal, the question is whether the enclosed land has a lawful use for domestic purposes because it is part of the same planning unit as the house. The planning unit and curtilage may cover the same area in practice, but equally may not.
9. The Council has not submitted the 1991 plans but the appellant has not shown that the Council's description of the 1991 permission is wrong. The appellant has not demonstrated that the enclosed land was included in the planning unit of the appeal house under the 1991 permission or was lawfully incorporated – through a later grant of planning permission for a change of use – into the planning unit at a later date.
10. I observed at my site visit that the enclosed land appeared to be part of a landscaped strip between the houses and the back edge of the footway – and that adds a little weight to my conclusion. The appellant has not demonstrated that the alleged change of use and enclosure of the amenity land to use as residential garden land is not in breach of planning control on the balance of probabilities. For that reason, the appeal cannot succeed on ground (c).

Ground (f)

11. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or the injury to amenity caused by the breach.
12. The breach of planning control in this case is the change of use and enclosure of amenity land to use as residential garden land. The requirements are to cease the use of the land and to remove the fence and all residential paraphernalia. The purpose of the enforcement notice is therefore to remedy the breach.
13. The appellant considers that the requirements of the notice are excessive because he thinks the residential use and enclosure of the land can be justified for reasons including the maintenance, appearance and security of the land. I

understand that these issues are important to the appellant but they relate to the merits of the alleged development and not the requirements of the notice. Since the appellant chose not to pursue an appeal on ground (a) for consideration of the deemed planning application, I cannot consider the merits of the alleged use under ground (f).

14. The appellant has also suggested that bushes could be planted on the land to soften the look of the site. However, that matter again goes to the merits of the development. I could not vary the notice so that the residential use does not need to cease and the fence could remain, so long as some shrubs are added, because the breach of planning control would not then be remedied.
15. I note that the appellant has stated that he remains open to other alternatives to resolve the issue. However, he has not shown that there are any lesser steps that would remedy the breach of planning control. I find that the requirements of the notice tally with the allegation and are not excessive but necessary to remedy the breach. The appeal on ground (f) must fail.

Other matters

16. The appellant has not pleaded ground (g), which is that the time for compliance with the notice falls short of what is reasonable. However, I can vary the period for compliance so long as doing so does not cause injustice to the Council or the appellant – and, in this case, the Council has stated that it would be open to the appellant being given longer to comply with the requirements because of the current Covid-19 pandemic.
17. I do not know if the appellant would need the assistance of a builder or any other persons to remove the fence and other items from the land as required. I accept, however, that it might take him longer than usual to procure any necessary services or support in the present circumstances. I also accept that the Council might face additional difficulties in ensuring compliance with enforcement notices at this time. It would be reasonable and cause no injustice for me to vary the notice so that period for compliance is extended from one month to two months.

Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Richard S Jones

INSPECTOR