



Appeal Decision

Site visit made on 14 July 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: 16 November 2020

Appeal A Ref: APP/R3325/C/20/3244232

Appeal B Ref: APP/R3325/C/20/3244233

Land at 7 Cannon Court Mews, Milborne Port, Sherborne, DT9 5RD

- Appeals A and B 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 Miss Wendy Evans (Appeal A) and Alan Trevett (Appeal B) against an enforcement notice issued by South Somerset District Council.
 - The enforcement notice was issued on 9 December 2019.
 - The breach of planning control as alleged in the notice is, without planning permission, the carrying out of engineering operations to raise the level of the rear garden; the demolition of a boundary wall in the Conservation Area; the construction of a new wall on the boundary together with retaining walls within the rear garden; and the construction of a subterranean building on the Land.
 - The requirements of the notice are to:
 - (i) Reduce the height of the boundary wall to the height of the previous boundary wall. The previous boundary wall is shown for illustrative purposes on the photograph TPW/08 attached to the notice;
 - (ii) Reduce the retaining block work wall so that it is below the height of the reduced boundary stone wall as required by (i) above;
 - (iii) Remove the subterranean building from the Land;
 - (iv) Restore the Land to the condition it was in before the breach took place by levelling the Land; and
 - (v) Remove all building materials, rubble and waste arising from compliance with (i), (ii), (iii) and (iv) above.
 - The period for compliance with the requirements is six months.
 - Appeals A and B are proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
-

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 20 October 2020.

Decisions

1. The enforcement notice is corrected by:
 - Inserting '*Milborne Port*' between '*the*' and '*Conservation*' in paragraph 3;
 - Deleting '*The previous boundary wall is shown for illustrative purposes on the attached photograph marked TPW/08*' from sub-paragraph 5(i); and
 - Inserting the words '*level and*' between '*the*' and '*condition*' in sub-paragraph 5(iv) but deleting the text '*by levelling the land*'
2. Subject to these corrections, Appeals A and B are dismissed and the enforcement notice is upheld.

The Grounds of Appeal

3. The appeals were made under ground (b) only, but the appellants assert that nothing has been done which requires planning permission and that amounts to a hidden appeal on ground (c). The Council has had an opportunity to consider the representations made by the appellants and I have therefore determined the appeals as proceeding on both grounds.

The Appeals on Ground (b)

4. An appeal on ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The appellants have stated that each and every act of development described in the allegation – that is, the raising of the level of the rear garden, demolition of a boundary wall, construction of a new boundary and retaining walls and the construction of a subterranean building – have not occurred.
5. However, the appellants have submitted no evidence in support of these assertions – and yet, in enforcement appeals, the onus is on the appellants to make their case on ground (b). Their evidence needs to be sufficiently precise and unambiguous to show the matters alleged have not occurred on the balance of probabilities. It is not enough for the appellants to merely assert that the notice is wrong.
6. The eastern boundary of the rear garden on the appeal site adjoins the street known as Pud Brook. That road slopes down so that it is higher by the appeal house than it is at the end of the garden. It is clear from Google Street View photographs, said to have been taken in 2009, and undated estate agent photographs, that there was previously a path towards the eastern side of the garden, leading down from the main garden level towards the lower level of the rear gate. At my site visit, admittedly after the notice was issued, I saw that the pathway is now positioned towards the western side of the garden and land levels in its previous position are more or less flat, matching that of the main garden and the top of the eastern boundary wall. The level of the garden has plainly been raised.
7. Photographs taken on a Council site visit in September 2019 show that the southern boundary wall and the adjoining part of the eastern boundary wall had been demolished and rebuilt to a higher level. By the time of my visit, the remainder of the southern wall had been raised.
8. I find it probable that the new stone-faced blockwork boundary wall performs a retaining function. There are also retaining blockwork walls either side of the concrete steps in the new location of the pathway leading up from the southern boundary door up to the main garden level, one side of which is clad in timber. The evidence that a subterranean building was probably constructed is that a Building Control officer saw an opening and void, and I saw that a gate in the southern boundary wall has been replaced by a door which would lead from the street to a level beneath the new ground level.
9. Thus, the appellants have not demonstrated that the matters alleged by the notice did not occur. I find that the alleged development did occur on the balance of probabilities and the appeals fail on ground (b).

The Appeals on Ground (c)

10. As explained above, the appellants' statement that 'nothing has been done that requires planning permission' amounts to a hidden ground (c) appeal – which is that the matters alleged by the notice, if they occurred, do not constitute a breach of planning control. It is again for the appellants to make their case.
11. S55(1) of the Town and Country Planning Act 1990 as amended (the 1990 Act) defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change of use. For the purposes of the Act, s55(1A) provides that building operations include demolition, rebuilding, structural alterations or additions, and other operations normally carried on by a person in business as a builder. S57 of the 1990 Act provides that planning permission is required for development, subject to the exclusions in s57(1) to (7).
12. I have found under ground (b) that the matters alleged in the enforcement notice probably occurred as a matter of fact. The appellants have not demonstrated or even sought to explain why, the operations or works involved in raising the level of the garden, demolishing a boundary wall and constructing a new boundary and retaining walls plus a subterranean building do not constitute development or do not for some other reason require an express grant of planning permission.
13. It has not been demonstrated that the matters alleged in the notice do not constitute a breach of planning control. On the balance of probabilities, there has been a breach as alleged. The appeals fail on ground (c).

Other Matters

14. It follows from my conclusions on grounds (b) and (c) that the enforcement notice will be upheld. That being the case, I should observe that the requirements of the notice are not precisely worded in some respects. I have the power to correct any errors or vary the terms of an enforcement notice if this would cause no injustice to the appellant or the Council.
15. Firstly, the copies of the enforcement notice provided by the appellants and the Council do not include the 'photograph marked TPW/08' referred to in requirement (i). The Council was asked to provide a full copy of the notice, but the photograph was only appended to their statement of case. I cannot therefore be sure that photograph marked TPW/08 was attached to the notice – but I am satisfied that the appellant will be aware in any event of the height of the previous boundary wall. I can delete the reference in the notice to the photograph marked TPW/08 without causing injustice to the parties.
16. Requirement (iv) of the enforcement notice is to 'Restore the Land to the condition it was in before the breach took place by levelling the Land'. Given that the land where the engineering operations have taken place was not previously level, this requirement is somewhat contradictory and confusing. It would cause no injustice to me to correct this requirement so that the land must be restored to its previous condition and level, but not 'levelled' as such.
17. Since I am correcting the notice, I shall amend paragraph 3 to clarify that the site is within the Milborne Port Conservation Area.

Conclusion

18. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and variations.

Richard S Jones

INSPECTOR