



Appeal Decision

Site visit made on 22 September 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 17 November 2020

Appeal Ref: APP/V2255/C/20/3247095

Land at 20 Hustlings Drive, Eastchurch, Sheerness, Kent ME12 4JX

- 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 Dennis Kavanagh against an enforcement notice issued by Swale Borough Council.
 - The enforcement notice was issued on 21 January 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of 13 brick-built pillars to the front curtilage of the Land in the approximate positions marked with red crosses on the attached plan.
 - The requirements of the notice are to:
 - (i) Demolish the thirteen (13) brick-built pillars shown in their approximate positions marked by red crosses on the attached plan.
 - (ii) Remove from the Land all bricks and building waste, materials and rubbish arising from the works undertaken in (i) above.
 - The period for compliance with the requirements is one (1) month from the date that this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Summary of decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction and a variation, as specified below.

Matters concerning the Enforcement Notice

2. The land affected by the notice should read 20 Hustlings Drive, Eastchurch, Sheerness, Kent ME12 4JX.
3. The notice is varied with Requirement (i) being deleted and re-worded as follows:
 - (i) 'Demolish all brick-built pillars surrounding the property's front curtilage, apart from those two piers linked by a low level brick wall, set to the side of the garage's driveway, and corresponding with the two red crosses shown on the attached plan nearest to the common boundary with No 22 Hustlings Drive'.

Preliminary Matters

4. The Council has not submitted any report as to the background to this case and why it was considered expedient to issue an enforcement notice in the circumstances. Neither has the Council produced any counter-statement to the

appellant's representations, nor any list of suggested conditions in the event that I was minded to allow the appeal and grant planning permission for the development.

5. Save, therefore for the text in the document, under 'Reasons for this Notice', whereby it is indicated that the alleged breach had occurred within the four years preceding the date of issue, and that the brick-built pillars amount to obtrusive structures causing significant harm to the street scene, contrary to policy DM14 of the Swale Borough Local Plan 2017, I have no other information before me to support the Council's case. Neither does it appear that any representations were received from neighbouring occupiers nor that there are any interested parties involved.
6. The enforcement notice, in identifying the land affected states the address as '20 Hustling Drive'. This is clearly a typographical error and I am correcting the notice, accordingly.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issue

7. The main issue is the development's effect on the character and appearance of the surrounding area.

Reasons

8. The appeal dwelling is a relatively large corner property, set in a reasonably sized curtilage, sited at the junction of Hustlings Drive and Carey Close. The wider setting is that of a recently built housing estate mainly characterised in by detached dwellings with attractive, largely open and lawned front gardens along with grassed verges.
9. The pillars which the Council have enforced against are reasonably and evenly spaced, and are built with a red brick type matching that of the main dwelling. The vast majority are located to the east of the driveway and are infilled by shrubs of a common species which, at the time of my site visit had almost reached the height of the piers.
10. The remaining two pillars, or supporting piers, have a low brick wall between, and are sited between the driveway and the common boundary with the neighbouring property, No 22. The plan accompanying the enforcement notice is dated 7 January 2020 but is now out of date as a two-storey detached garage structure has been erected immediately beyond the dwelling's west flank wall. This is accessed via a crossover ahead of the driveway fronting the garage. Given this stand-alone feature I am satisfied that the said two pillars' siting and effective demarcation lessens their effect on the street scene and sets them aside from the majority.
11. It is not clear what the situation was at the time the enforcement notice was issued. In circumstances such as these, brick-built pillars are often placed to support low level walling usually overlain by railings. I accept that this has not occurred here, but the arrangement as exists whereby rows of shrubs are interspersed with the pillar features looks somewhat odd and brings into question their purpose. If the intention is to surround the front curtilage with a hedgerow then the pillars are an impediment, disrupting the continuity.

12. The appellant says that the pillars are neither oversized nor obtrusive, as the enforcement notice suggests. He also refers to their "limited number". I disagree, their number is not inconsiderable. Whilst the pillars themselves have been constructed in matching brick and are to a conventional design it seems to me that the overriding issue is that they are untypical of the prevailing housing layout in the vicinity and have an adverse effect on the characteristic openness of the surrounding area which allows for clear views across the various lawned front curtilages.
13. The appellant is correct that the removal of the pillars, given the planting between, will not reinstate the open frontage at the appeal property. However, the enforcement notice does not refer to the planting which leads me to believe that at the time the notice was issued the pillars would have stood as individual entities without any soft, vegetative infill. In the circumstances it is not, therefore, open to me to bring the planting into the equation but also, by the same measure, that does not mean that the pillars have to be taken as features associated with the shrubs helping to "*structure the planting*", as stated by the appellant. I am not clear what this means and, as the hedge develops, it would not realistically require support. This renders the pillars superfluous structures which, due to their height and positioning have an appreciable impact on the street scene, compounded by it being at odds with the general layout within the immediate locality.
14. It must be said that there are local examples of low hedging which demarcate front lawns from the back edge of the footway. The difference is that these would have been planted with that specific purpose rather than, as would seem apparent by the appearance of the appeal site, an attempt to mitigate the pillars' presence.
15. In support of his case the appellant has provided photographs of examples of boundary enclosures and a decision letter relating to a successful appeal at No 11 Hustlings Drive whereby, in 2016, planning permission was granted for low retaining walls which provided planters. This development is materially different to that the subject of the current appeal. I have had regard to the various examples put forward, but each case has its own particular circumstances which amount to relevant material considerations individually illustrating the planning merits and/or impacts involved. As such, direct comparisons and parallels are not easily drawn.
16. The property at the junction of Hustlings Drive and Court Tree Drive has its side curtilage facing the former, but is fronted by a brick wall along the return. However, there is a material difference between this arrangement and that of an 'open' front curtilage which, in design terms, was clearly a characteristic feature when the local housing was constructed. Directly opposite this brick wall, No 2 Hustlings Drive, has modest, low hedging around the edge of its front garden.
17. The appellant mentions that his son has a medical condition, ADHD, and the boundary enclosure discourages his son from running out into the road. I have had regard to this but, whilst I sympathise, I have not had sight of any medical records to this effect. Besides, from my observations, this does not outweigh the visual harm to the character and appearance of the surrounding area, and also the material conflict with the design objectives of policy DM14 of the Swale Borough Local Plan. Further, as the removal of the pillars in the time specified

by the enforcement notice coincides with the 'planting season', it provides the opportunity to infill the resultant gaps with additional shrubs. However, that remains a matter for the appellant.

18. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, subject to the said correction and variation, and refuse to grant planning permission on the deemed application.

Formal Decision

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

Timothy C King

INSPECTOR