



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: 25 November 2020

Appeal Ref: APP/N1730/C/19/3237922

Land at 49 Hardy Avenue, Yateley, Hampshire GU46 6XU

- 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 Gary Pope against an enforcement notice issued by Hart District Council.
 - The enforcement notice was issued on 22 August 2019.
 - The breaches of planning control as alleged in the notice are, without planning permission:
 - Erection of a single storey side extension as shown edged red on Plan 2 and edged red on Plan 3.
 - The increase in height and replacement of the boundary wall which runs along the side boundary of the property as shown between the markers x-y-z on Plan 1.
 - The requirements of the notice are:
 - 5.1 - Remove the single storey side extension as shown on Plan 2 and Plan 3 from the Land.
 - 5.2 - Reduce the height of the side boundary wall between points x-y marked on Plan 1 to a height not exceeding 1 metre. (This measurement to be taken from existing ground level on the external face of the side boundary wall, adjacent to the public footpath).
 - 5.3 - Reduce the height of the side boundary enclosure between points y-z marked on Plan 1 to a height not exceeding 2 metres. (This measurement to be taken from existing ground level on the external face of the side boundary enclosure, adjacent to the public footpath).
 - 5.4 - Remove any debris associated with the removal of the single storey side extension, wall and enclosures off the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) 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 'and replacement' from paragraph 3.2.
 - Deleting requirement 5.2.
 - Deleting 'y-z' and substituting 'x-y-z' in requirement 5.3
 - Renumbering requirement '5.3' as '5.2' and requirement '5.4' as '5.3'.
2. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by Mr Gary Pope against Hart District Council. This application is the subject of a separate decision.

Background and preliminary matters

4. The appeal property comprises a detached dwellinghouse that was extended following a grant of planning permission¹ in 2017 for a single storey side and rear extension. The enforcement notice relates in part to a further extension which has been erected between what has been approved and the splayed, south eastern side boundary. A retrospective application for this single storey side extension was dismissed at appeal² in May 2019.
5. The south eastern side boundary treatment, which runs adjacent to the verge of a public footpath, is also subject to the enforcement notice.
6. The appeal has been made on grounds (b), (c), (f) and (g). For grounds (b) and (c), the onus is on the appellant to make his case and the relevant test is 'the balance of probabilities'.

The ground (b) appeal

7. An appeal under ground (b) is that the matters alleged by the notice have not occurred.
8. The appellant does not specifically argue that the alleged boundary wall has not occurred. His case is that the alleged increase in height and replacement of the boundary wall is ambiguous, contradictory, vague and flawed. However, the Council's photographic evidence demonstrates that the boundary enclosure has, in part, been replaced and its height increased.
9. Nevertheless, I accept that wording of the allegation would be clearer by removing reference to 'replacement', which is somewhat irrelevant for the purposes of the enforcement notice. The crux of the allegation is the increase in height of the boundary treatment and this is reflected in the requirements of the notice which are to reduce its height. The appellant is plainly aware of what the notice is seeking to enforce against and I am satisfied that it can be corrected by removing reference to 'the replacement' of the boundary, without causing injustice.
10. The appellant also raises concern that the enforcement notice does not identify the height of the alleged development, the height of the original wall or by how much it has increased. However, simply because the enforcement notice does not do so, does not demonstrate that the matters have not occurred. The notice is clear on its face what development is being attacked. Whether or not what has occurred amounts to a breach of planning control is considered under ground (c) below.
11. The appellant acknowledges that the single storey side extension (which forms part of the side boundary treatment) has been erected without planning permission. This aspect of the enforcement notice is not therefore contested under ground (b).

¹ Ref: 17/02303/HOU

² Appeal Ref: APP/N1730/D/19/3225301

12. I therefore conclude, on the balance of probabilities, that the matters alleged in the notice have occurred. The appeal on ground (b) fails.

The ground (c) appeal

13. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control.
14. Again, the appellant makes no such arguments in respect of the single storey side extension. Indeed, as noted, a retrospective application for it was dismissed at appeal in May 2019.
15. The appellant does argue that the alleged boundary treatment benefits from planning permission granted by Schedule 2, Part 2, Class A of the GPDO³. Part 2, Class A provides that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted development. However, paragraph A.1(b) states that development is not permitted by Class A if the height would exceed 2m above ground level.
16. The appellant has highlighted, and I saw, that land levels within the site are higher than that of the adjacent public footpath. For the purposes of measuring the height of the boundary wall, the appellant has referred to the Technical Guidance for permitted development rights for householders⁴. However, that document relates to Part 1 of Schedule 2 of the GPDO, rather than Part 2, which is applicable here.
17. Moreover, Article 2(1) of the GPDO explains that a 'building' does not include any gate, fence, wall or other means of enclosure. This differs from the definition of a building set out in the 1990 Act. Consequently, for the purposes of the GPDO, the boundary wall is not a building and the Technical Guidance and GPDO interpretation⁵ for measuring the height of a building from the level of the highest part of the surface of the ground adjacent to it, does not apply to the alleged boundary wall.
18. The evidence provided by the Council shows that the boundary wall is in excess of 2m when measured from the ground level of the adjacent public footpath. Even if the measurement was to be taken from the highest point inside the site, it appears, on the balance of probabilities, that at least part of the boundary wall exceeds 2m in height, given that it also forms part of the side elevation of the extension. Although the appellant argues differently, no dimensioned evidence is provided.
19. I conclude that the appellant has not demonstrated that the matters alleged in the notice were not in breach of planning control on the balance of probabilities. The appeal on ground (c) fails.

The ground (f) appeal

20. 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.

³ The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO)

⁴ Ministry of Housing, Communities & Local Government – Permitted development rights for householders – Technical Guidance – September 2019

⁵ Article 2(2)

21. As noted, the alleged breaches of planning control are the erection of a single storey side extension and the increase in height and replacement of the boundary wall. The first requirement of the notice seeks removal of the single storey side extension in its entirety. The purpose of this requirement is therefore to remedy the breach. In this situation, the only appeal that can be considered on ground (f) is whether the requirement is excessive to remedy the breach.
22. The appellant states that the extension is an integral part of the dwelling but provides no further explanation or evidence to this effect. My own observations are that it appears to be a relatively simple and discreet structure added onto, rather forming part of, the approved side extension. Consequently, I see no reason why its removal should cause significant difficulties or result in undue damage to the retained parts of the dwelling that could not be reasonably resolved.
23. As noted, the appellant applied for retrospective planning permission for the alleged side extension. The refused plans are attached to the enforcement notice and requirement 5.1 refers to them. The extension to be removed is edged in red and clearly only includes superstructure works. The same requirement cannot therefore be reasonably described as ambiguous. The appellant will plainly know what is required to comply with the notice. Moreover, the internal floor treatment is a continuation of the outside patio area so the removal of the above ground works would leave what would appear to be part of the outdoor amenity space.
24. I recognise that part of the extension also forms part of the boundary wall but I have found that the works to increase the height of the boundary wall are not permitted development. Compliance with requirement 5.1 would not leave the dwelling unreasonably exposed because requirement 5.3 seeks only to reduce the boundary wall to 2m, rather than its complete removal.
25. For these reasons I do not consider requirement 5.1 to be excessive for the purpose of remedying the breach.
26. The second and third requirements are for a reduction in the height of the wall rather than its complete removal. This is consistent with an intention to remedy the injury to amenity.
27. Requirement 5.2 is to reduce the height of the side boundary wall between points x-y marked on Plan 1, attached to the enforcement notice, to a height not exceeding 1 metre. This roughly equates to the section of the wall forward of the alleged extension. The GPDO is not retrospective but it may offer a valid fallback position. The question that arises is whether the requirement exceeds what could be achieved if permitted development rights were exercised. As noted, Part 2, Class A of the GPDO grants planning permission for the erection of a wall up to 2m in height where it is not adjacent to a highway, as is the case here.
28. The Council rightly point out that Article 3(6) of the GPDO specifies that the permitted development right does not authorise any development that creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons. However, the Council has provided no evidence to show that the wall has resulted in conflict between pedestrians and vehicles, or a particular highway safety issue. From my site

visit I could see that the obstruction to visibility is not caused by the side boundary wall, but by a tree and vegetation in combination with the front boundary wall at the appeal site.

29. I have noted the comment from Yateley Town Council that the 'estate should remain open plan as designated'. However, I have no evidence, such as the original planning permission, which shows that boundary treatment permitted development rights have been removed.
30. I therefore find that it is excessive for the notice to expressly require the wall between points x-y to be reduced below 2m, when a wall of such height could be rebuilt as permitted development.
31. Nevertheless, I have already found, under ground (c), that the boundary wall is in breach of planning control by being in excess of 2m. Requirement 5.3 to reduce the height of the boundary wall between the points y-z marked on the plan attached to the notice to a height not exceeding 2m is not therefore excessive. I have also found that its height should properly be measured from the ground level of the adjacent footpath and therefore clarification in that regard is helpful.
32. I shall therefore delete requirement 5.2 and vary requirement 5.3 so that it refers to the full length of the boundary enclosure, from points x-y-z.
33. Requirement 5.4 to remove any debris associated with the single storey side extension, wall and enclosures is clear and unambiguous and does not target the side extension which has planning permission. Making good thereafter is a matter for the appellant to decide.
34. To the limited extent described, the appeal on ground (f) succeeds.

The ground (g) appeal

35. The ground (g) appeal is that the three months given to comply with the notice is too short. The appellant requests a period of 12 months for suitably qualified contractors to be found and scheduled to carry out the works, having regard to difficulties arising from Brexit and the Covid-19 pandemic.
36. The Council acknowledge circumstances have changed since issuing the notice as a result of Covid-19 and have suggested a timescale of six months.
37. A period of 12 months, as suggested by the appellant, is disproportionate having regard to the nature and extent of the works and as such is unjustified. However, I acknowledge that it may take longer than usual to procure the services of a contractor under the present circumstances and extending the period for compliance to six months would in my view strike a reasonable and proportionate balance between any difficulties the appellant may encounter and the public interest in this case.
38. I shall vary the enforcement notice accordingly prior to upholding it. The appeal on ground (g) succeeds to that extent.

Other matters

39. I have noted the representations made by interested parties, some of which I have addressed above. I have also noted the references made by the main parties to the development plan. However, I am unable to consider matters

relating to the planning merits because the appellant has not made an appeal on ground (a) and paid the fee for consideration of a deemed planning application.

40. Moreover, matters relating to the front boundary wall and raising the level of the rear garden do not form part of the enforcement notice and are therefore beyond my remit.

Conclusion

41. For the reasons given above, I conclude that the requirements of the notice are, in part, excessive to remedy the injury to amenity and the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on grounds (f) and (g) succeeds to that extent.

Richard S Jones

INSPECTOR