



Appeal Decision

Site visit made on 14 April 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 30 April 2021

Appeal Ref: APP/J1535/C/20/3259236

5 Murthing Lane, Stapleford Abbots, Romford RM4 1HT

- 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 Nikki Mussett against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice was issued on 16 July 2020.
 - The breach of planning control as alleged in the notice is the erection of a gate and post over 1 metre in height on the Land, adjacent to the highway.
 - The requirements of the notice are:
 - (i) Remove the unauthorised gate and gate posts, or
 - (ii) Reduce the gate and gate post to a height of no more than 1 metre.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (e) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Procedural Matters

2. The appeal has not been made under ground (a). Therefore, the merits of the appeal scheme are not before me and I am unable to give consideration as to whether deemed planning permission (DPA) should be granted. The comments made by the appellant in respect to safety, the presence of similar structures in the vicinity of the site and the effect of the gate/gatepost on the Green Belt and traffic movements relate to the merits of the development and do not fall to be considered in an appeal under ground (d) or ground (e).
3. The characteristics of any person reporting the breach to the Council and his/her motives for doing so are not relevant to the appeal decision and any potential prejudice on the part of the Council does not fall to be considered by me. The latter is a matter between the appellant and the Council.

The Notice

4. The appellant argues that the feature which has been constructed is not a conventional gate, as it is a one-piece sliding object. However, it encloses the front garden area and attaches to the gate post, therefore it functions in the same way as a gate and could be described as such. It follows that I do not find the description of the breach of planning control to be inaccurate and the notice does not require correction.

Ground (e)

5. An appeal under ground (e) is made on the basis that copies of the enforcement notice were not served as required.
6. Section 172(2) of the Town and Country Planning Act 1990 (as amended) (the Act) requires that a copy of an enforcement notice be served (a) on the owner and on the occupier of the land to which it relates and (b) on any other person having an interest in the land being an interest which, in the opinion of the authority, is materially affected by the notice.
7. The appellant has not specified on what basis the notice was not properly served on everyone with an interest in the land. He only refers to contradictory comments by the enforcement officer on his appeal form and does not refer to the service of the notice at all in his statement.
8. The Council says that it served the notice on two named occupiers of 5 Murthering Lane and also on 'the occupier', 'the owner' and Barclays Bank. In the absence of any contrary evidence from the appellant, the notice has been served as required.
9. For the reasons set out above the appeal under ground (e) fails.

Ground (d)

10. An appeal on ground (d) is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This is a legal ground of appeal and the onus of proof lies with the appellant. The evidence must be sufficiently precise and unambiguous and standard of proof is the balance of probabilities.
11. This ground of appeal accepts that at some stage there has been a breach of planning control, but that it is immune from enforcement action, having, under the terms of Section 171B(1) of the Act, subsisted for a four-year period prior to the service of the notice in the case of operational development like the construction of gates and gateposts. The notice was issued on 16 July 2020 therefore the relevant four-year period starts on or before 16 July 2016.
12. The appellant says that the gates were upgraded at the end of 2014 but there is no evidence to support this contention. An invoice for the fabrication, delivery and installation of a sliding gate dated 6 February 2015 has been provided but there is no further evidence to show that the gate was installed at this later date, which is also before the relevant date, 16 July 2016.
13. The neighbours at No. 4 say that the gate was in situ when they viewed their house prior to purchase at the beginning of 2017 and that the gate had probably been there for more than 4 years but there is no substantive evidence of this.
14. The Council has submitted screen shots from Google Street view which are dated August 2012 and October 2014. Neither of these show the current gate in situ at No. 5. The Council refers to a 2018 photograph, but this is not before me. Even so, the relevant date for the four-year period is 16 July 2016 and there are no details of the street scene around that time. The submissions

made by the Council do not contradict or otherwise make the appellant's version of events less than probable.

15. However, the appellant also has to provide evidence which is precise and unambiguous. In this case there is an inconsistency between the time when the appellant said that the gates were installed and the date of the invoice, which leads me to conclude that his evidence is ambiguous. Furthermore, he has not provided any evidence to demonstrate when the installation of the gate was carried out or substantially completed, thus the requirement to be precise has not been achieved.
16. Drawing all these points together I conclude that the appellant has not achieved the necessary standard of proof, which is the balance of probabilities. Therefore, the appeal fails on ground (d).

Sarah Dyer

Inspector