



Appeal Decision

Site visit made on 16 August 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2021

Appeal Ref: APP/P2114/C/20/3251025

Land adjacent to Puckpool House, Puckpool Hill, Ryde, Isle of Wight PO33 1PJ

- 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 Joseph Kohn against an enforcement notice issued by Isle of Wight Council.
 - The enforcement notice was issued on 7 February 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, operational development by the unauthorised construction of three outbuildings, the unauthorised construction of two main front boundary walls that are in excess of one metre in height and the unauthorised construction of three brick and render entrance piers that are in excess of one metre in height.
 - The requirements of the notice are: (i) To demolish the outbuildings and remove all resultant demolition material from the Land. (ii) To reduce the height of the main front boundary walls to no more than 1 metre in height and make good resultant walls. Remove all resultant demolition material from the Land. (iii) Reduce the height of the gates and brick and render entrance piers to no more than 1 metre in height and make good resultant gates and piers. Remove all resultant demolition material from the Land. (iv) To remove all resulting material from the Land.
 - The period for compliance with the requirements is 2 months in respect of requirement (i) and 3 months in respect of requirements (ii), (iii) and (iv).
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Summary of Decision

1. The appeal is dismissed and the enforcement notice upheld with variations.

The ground (d) appeal

2. This ground of appeal is brought in respect of the largest of the 3 outbuildings, only. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action. The latest date for the substantial completion of the largest outbuilding would thus need to be 7 February 2016.
3. The appellant has provided five Statutory Declarations as well as 12 letters. The declaration of the appellant states that the original structure was demolished in June/July 2015 and the new building erected and completed in

July/August 2015. He then takes the opportunity to exhibit three photographs taken in June 2015, showing the demolition of the original structure. However, given the seeming availability of photographs, none have then been provided of the completed building in July/August 2015.

4. The declaration of a Mr Mansell states that the new build site was completed in August 2015. This is however vague and ambiguous, given I am considering one building, as opposed whatever a new build site may or may not refer to.
5. The declaration of a Mr Kohn Senior is that he was involved in the construction of the building during July/August 2015. Whilst that might be the case, it does not evidence when the building was substantially complete. The declaration of a Mr Morey is that he witnessed the original structure being demolished and gave advice in respect of the rebuild. Whilst again that might be the case, it does not evidence when the building was substantially complete.
6. The Council says that a concern was raised about the construction of the building on 7 April 2016 and they visited the site on 13 April. The Council then provides contrary evidence in the form of photographs taken during that visit which shows the building, under construction, with the walls being built. It was therefore not substantially complete. This also seemingly contradicts the declaration of a Mr Roberts, wherein he states that he constructed a blockwork cladding shell around an existing timber-built store in the summer of 2015, which was completed over a 3 week period with only remedial work thereafter.
7. In response, it is said on behalf of the appellant that the Council's case is limited as it is principally based on photos which are not date stamped, and which if were the case, could have allowed more weight to be attached to their significance. However, the Council has provided evidence of the date of its site visit, and when those photos were taken, being 13 April 2016, by means of a screen shot of the file information associated with each photograph. This then demonstrates on the balance of probabilities that they were taken between 1000 and 1001 on that date. It is also clear from the email correspondence that ensued between the Council and appellant that the site was visited on the morning of 13 April 2016.
8. It is then said that an aerial photograph dated March 2016 would appear to indicate the building was completed and completely roofed before the date of the Council's visit. That photograph however cannot be clearly deciphered and that generalised date of March 2016, as well as its origins, make it a vague and ambiguous piece of evidence which does not demonstrate on the balance of probabilities the substantial completion of the building.
9. The site visit photos therefore provide clear and unambiguous evidence that the building was not substantially complete by 7 February 2016. I afford the validity of these photos and quality of evidence they provide significant weight. In light of this, no further corroboration is required. However, when the appellant sought planning permission to retain the building, his planning application form stated that works started on 1 July 2015 and were completed on 1 October 2016, which would be consistent with those photos. It is then for the appellant to provide precise evidence explaining why that was not the case if that is now said to be incorrect. Moreover, the complaint about the construction of the building in April 2016 is similarly consistent with those photos.

10. Twelve letters have also been provided by the appellant, but these are vague and ambiguous in respect of evidence to demonstrate on the balance of probabilities the substantial completion of the building, particularly given the photographic evidence available. Moreover, as these are not in the form of statutory declarations, I afford them only very limited weight.
11. Whilst the appellant's own evidence seeks to corroborate his case, it is vague and ambiguous, and he has provided no compelling explanation as to why his evidence is at such odds with that provided by the Council, in particular the date and time stamped photographs. This casts considerable doubt in my mind and accordingly as a matter of fact and degree the appellant has failed to discharge the necessary burden of proof to demonstrate his case on the balance of probabilities.
12. The appeal on ground (d) therefore fails.

The ground (f) appeal

13. The purpose of the enforcement notice is to remedy the breach of planning control, albeit there are also elements of under-enforcement. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.
14. The appellant accepts there are sections of the two main front boundary walls that abut the public highway but considers there are also lengths of the wall that could be deemed to not be adjacent, and therefore different permitted development rights¹ apply. There is however little evidence that the two main front boundary walls enforced against were constructed as anything other than a single building operation. The entirety therefore amounts to a breach of planning control. To remedy the breach of planning control the walls should therefore be demolished.
15. The Council has however recognised that this would be excessive, hence its requirement to reduce the height of the walls to accord with permitted development rights for walls adjacent to a highway, being 1m. There is then no ground (a) appeal before me to consider granting planning permission for an alternative scheme. Moreover, rather than propose a specific and detailed lesser step, the appellant merely speculates as to what parts of the walls might constitute adjacent to the highway, which if taken forwards, would lead to an ambiguous requirement in the notice itself. I am however satisfied from my site visit that the entirety of the walls enforced against would fall as adjacent to a highway owing to their positioning. The gates are not the subject of the enforcement notice and therefore I need not consider them.
16. The appellant then contends that the track within the site is not a highway for the purposes of considering permitted development rights, such that it would be excessive to reduce the height of the three sets of brick and render entrance piers to anything less than 2m in height.
17. There is very little evidence before me to demonstrate on the balance of probabilities that these developments are adjacent to a highway. Common law

¹ Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015

has established that a highway is a defined route over which the public can pass and repass without hindrance or charge. The appellant has put forward his reasoning as to why the track is not a highway, including that it is not open to the public at large and there is no right of public passage, and the Council has not responded to dispute this. I could see during my site visit that the track merely provides private access to one other property. Contrary to the Council's assertion, the appellant then does propose a lesser step in the form of a reduction to 2m rather than 1m in height. Given the Council has already under-enforced, I am consequently persuaded that it would be excessive to reduce the height of these developments to 1m, and so will vary the notice accordingly, as the evidence before me demonstrates on the balance of probabilities that the track is not a highway.

18. The Council has confirmed that the notice does not require the removal of a concrete base, which has been queried by the appellant. As no other lesser steps are before me, the appeal on ground (f) succeeds to the limited extent described above.

The ground (g) appeal

19. The appellant contends that the time given to comply with the requirements of the notice are too short and proposes a period of 9 months with a further 3 months to remove the resultant material from the land.
20. I am not convinced on the evidence before me that the pandemic is an impediment to appointing building contractors to complete the works such that up to 12 months is required. Neither is the need to remove the contents of the building's justifiable grounds for such a period.
21. I consider that a period of 6 months strikes an appropriate balance so as not to perpetuate the breaches of planning control.
22. The appeal on ground (g) therefore succeeds to this extent.

Overall Conclusion

23. For the reasons given above I conclude that the appeal should not succeed other than to the limited extents on grounds (f) and (g). I shall uphold the enforcement notice with those variations.

Formal Decision

24. It is directed that the enforcement notice be varied by:
- substituting the words '*...to no more than 2 metres in height...*' in paragraph 5. (iii)
 - substituting '*6 months*' as the periods for compliance
25. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR