



Appeal Decisions

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2021

Appeal A Ref: APP/F4410/C/21/3277903

Appeal B Ref: APP/F4410/C/21/3277904

Land at 9 Town Moor Avenue, Town Fields, Doncaster DN2 6BL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mrs Maria Blackie against an enforcement notice issued by Doncaster Metropolitan Borough Council.
 - Appeal B is made by Mr Robert Blackie against an enforcement notice issued by Doncaster Metropolitan Borough Council.
 - The enforcement notice was issued on 18 May 2021.
 - The breach of planning control as alleged in the notice is: The Land is situate in a designated Conservation Area and has without planning permission, the unauthorised development of the creation of a vehicular access to the front boundary of a residential property on the Land in the position marked blue on Plan A.
 - The requirements of the notice are:
 - (i) Make good the boundary treatment by carrying out the required works to restore the part-demolished red-bricked wall as shown at Position 'A to B' on Plan A to its former condition and erect the original pedestrian gate on the Land as shown in Annex B attached to this Notice.
 - The period for compliance with the requirements is one month.
 - The appeals are proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. The enforcement notice is corrected and varied by:
 - (1) Deleting the allegation within section 3 of the enforcement notice (the breach of planning control alleged) and replacing it with the following:
Without planning permission the creation of a vehicular access in the position marked blue on Site Plan A attached to this Notice.
 - (2) Deleting the requirement in section 5 of the enforcement notice and replacing it with the following: *(i) Restore the boundary treatment as shown at position 'A to B' on Site Plan A to its former condition as shown in Site Plan B attached to this Notice, except for the hedge.*
2. Subject to this correction and variation the appeals are dismissed, and the enforcement notice is upheld.

Preliminary Matter

3. In reviewing the file, it appeared that the appeals could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site given the ground of appeal and points in dispute.

The Enforcement Notice

4. The allegation is worded in a complicated manner which makes it difficult to follow and determine what the act of development subject to the notice is. However, the description does not render the notice completely unclear, and it is evident to me that the appellants understand the allegation. I have a duty to get a notice in order if I can. Pursuant to section 176 of the Act I have power to correct any defect, error or mis-description provided I am satisfied there will be no injustice to either party. I have corrected the allegation to remove superfluous wording so that it clearly sets out the matter which constitutes the breach of planning control. This correction neither enlarges or reduces the scope of the allegation and as such there is no injustice to either party.
5. I have corrected the allegation to refer to Site Plan A and the requirement to Site Plan A and Site Plan B, since this is how the attachments are labelled.

The appeals on ground (f)

6. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
7. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the breach of planning control which has occurred. The second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.
8. In this case the enforcement notice requires the boundary to be restored to its former condition. As such, I find that its purpose is to remedy the breach of planning control that has occurred. That purpose can only be achieved by restoring the boundary to its former condition.
9. The appellants stated that they no longer have the original materials. However, providing that the replacement wall and gate match those removed, that would comply with the purpose of the requirements of the notice – to remedy the breach of planning control. Consequently, I consider that the requirement to reinstate the *original* [my emphasis] pedestrian gate is excessive, and I will therefore vary the notice accordingly.
10. As issued and varied the enforcement notice does not require the reinstatement of the hedge, since its removal does not constitute development.
11. The appellants suggested a lesser step of installing a wider gate or a combination of railings and a gate, which they consider would enhance the area. However, no specific details have been provided and, in any event, this and arguments about the number of houses which have off road parking to the front are matters which relate to planning merits.
12. Where there is no appeal under ground (a) consequently there is no deemed application for planning permission, as such there can be no arguments about the planning merits of the development under ground (f). Similarly, the appellants' misgivings about the Council's handling of the case and the costs associated with complying with the requirements are matters which have no bearing on this ground of appeal. The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose.

13. Since as varied the requirements would do no more than seek to achieve the purpose of the notice - to remedy the breach of planning control, it is not excessive. There is partial success under the ground (f) appeals.

Conclusion

14. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and variation.

Felicity Thompson

INSPECTOR