



Appeal Decision

Site visit made on 19 April 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 April 2022

Appeal Ref: APP/P1425/C/21/3277579

Land parcel between Nos. 128 & 130 Court Farm Road, Newhaven, East Sussex

- 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 John Summers against an enforcement notice issued by Lewes District Council.
 - The enforcement notice was issued on 19 May 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a fence and gates, classed as unauthorised development.
 - The requirements of the notice are: (i) Remove the unauthorised fence and gates from the Land in their entirety (ii) Clear all resultant materials and debris resulting from its removal.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Summary of Decision

1. The appeal is dismissed.

The ground (e) appeal

2. This ground of appeal concerns whether the enforcement notice was properly served on everyone with an interest in the land.
3. The Council has provided evidence that it sought confirmation of ownership details for the site by email, conducted a Land Registry search, fixed copies of the notice to the site and sent a copy of the notice to an agent who worked for the appellant.
4. The appellant then does not dispute the evidence of service provided by the Council and provides very little evidence of substantial prejudice. However, even if the enforcement notice had not been served correctly, I have powers under S176(5) of the Act to disregard non-service provided that neither an appellant nor other relevant persons had been substantially prejudiced by the failure to serve him or her.
5. Accordingly, even if the enforcement notice had not been served correctly, given the efforts of the Council, which included copies displayed at the site and sent to an agent, based upon the very limited evidence before me it cannot be said that there has been substantial prejudice to a relevant person.
6. The appeal on ground (e) therefore fails.

The ground (f) appeal

7. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. 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.
8. The appellant contends that the fence and gates could be painted and reduced in height. That however requires an assessment of planning merits which in the absence of a ground (a) appeal, I am unable to do.
9. As there are no lesser alternative steps before me to remedy the breach of planning control, the appeal on ground (f) therefore fails.

The ground (g) appeal

10. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short.
11. The appellant contends that if the notice period could be extended to 2 years it would enable the necessary consultations and planning determination for the wider site to materialise. However, whilst I appreciate the appellant considers the fence and gates to be a temporary installation, and stops trespass and fly tipping, this and the wider planning aspirations for the site do not persuade me that the time given to comply with the straightforward requirements of the notice are too short. There is also very little evidence before me that planning permission has since been granted, or pending, to retain the fence and gates or any derivative thereof.
12. A period of 2 years would also be tantamount to a temporary planning permission for the fence and gates, and there remains no ground (a) appeal before me. The period of 3 months afforded by the notice therefore strikes the appropriate balance to remedy the breach of planning control.
13. The appeal on ground (g) therefore fails.

Overall Conclusion

14. For the reasons given above I conclude that the appeal should not succeed. I shall therefore uphold the enforcement notice.

Formal Decision

15. The appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR