



Appeal Decision

Site visit made on 10 May 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2022

Appeal Ref: APP/D3640/C/21/3289049

Graylands, Windlesham Road, Chobham, Surrey GU24 8SN

- 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 Nigel Chapman against an enforcement notice issued by Surrey Heath Borough Council.
 - The enforcement notice was issued on 12 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the operational development consisting of a front boundary brick wall and associated wooden gates.
 - The requirements of the notice are:
 1. Demolish the front boundary wall and wooden gates hatched in blue on the attached site location plan.
 2. Remove all resulting materials and debris arising from Step 1 above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (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.
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Decision

1. It is directed that the enforcement notice is varied by:
 - Deletion of requirement 1 and 2 under section 5 (What you are required to do), and substituted therefor by the following requirements:

“(i) Reduce the height of the front boundary wall and associated gates, shown in the approximate position hatched in blue on the attached site location plan, to no more than 1 metre above ground level; or

(ii) Demolish the front boundary wall and gates, shown in the approximate position hatched in blue on the attached site location plan.

(iii) remove all constituent materials resulting from compliance with either requirement (i) and (ii) from the site.”
 - deleting the words “3 months” within section 6 (Time for Compliance) and its replacement with “4 months”.
2. Subject to the variations, the enforcement notice is upheld.

Appeal on ground (f)

3. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
4. The step that is required by this enforcement notice is to demolish the front boundary wall and wooden gates. The purpose of the notice therefore clearly comes under S173(4)(a) of the 1990 Act which amongst other things states, remedying the breach by restoring the land to its condition before the breach took place. However, S173(4)(a) of the 1990 Act also states remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land.
5. The appellant considers that the requirement of the notice is excessive and goes beyond what is necessary to remedy the breach. In particular the appellant states that the retention of a one metre high treatment at the frontage with Windlesham Road would constitute permitted development (PD) by Article 3 and Class A of Part 2, Schedule 2 of the Town, and Country Planning (General Permitted Development) (England) Order 2015 (GPDO 2015).
6. The Council state that the wall is not positioned on land solely within the ownership of the appellant, and therefore consider that PD rights are not applicable in this case. However, no further explanation has been provided as to how and why this would specifically remove PD rights from the property.
7. Whilst PD rights cannot be applied retrospectively to the development carried out, it is an obvious fallback position that if the whole front boundary was removed the appellant would have permitted development rights to erect another boundary treatment up to 1m in height where it is adjacent to the highway. Moreover, the enforcement process is meant to be remedial and not punitive. Therefore, with this right available and as a viable alternative, it would be sufficient to vary the notice and add an alternative requirement to reduce the height of the front boundary treatment to no more than 1 metre above ground level. This would remedy the breach of planning control, in line with s173(4)(a) of the Act. Varying the notice on this basis would cause no injustice to either party, as it would not make it more onerous.
8. I therefore conclude that the breach of planning control could be remedied by a lesser step and the requirements of the enforcement notice should be varied accordingly.
9. The ground (f) appeal therefore succeeds in part.

Appeal on ground (g)

10. This ground of appeal is that the time given to comply with the notice is too short. The appellant asks that the time for compliance is extended from 3 to 12 months, in order to secure a planning permission for an alternative boundary treatment, and that the current compliance period does not allow for the practicalities of raising finance, identifying, and appointing a contractor to physically carry out the works.

11. The Notice identifies that the front boundary treatment constitutes inappropriate development which, by definition, is harmful to the Green Belt and also results in harm to the character and appearance of the area. Therefore the 12 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements.
12. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. To provide additional time to seek planning permission for an alternative scheme it seems reasonable to allow for some further time for this and to carry out the necessary works. In light of the above, a 4 month period for compliance would strike a more reasonable and proportionate balance to comply with the notice. I shall therefore extend the period from 3 to 4 months for compliance with the notice.
13. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

14. I conclude that the requirements of the notice are excessive to remedy the breach and it is reasonable to require the development to comply with the GPDO 2015. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.
15. I also conclude that 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 ground (g) succeeds to that extent.

R Satheesan

INSPECTOR