



Appeal Decision

Site visit made on 8 August 2022

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Appeal Ref: APP/D3125/C/22/3295084

17 Ashcombe Close, Witney, Oxfordshire, OX28 6NL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Steptoe against an enforcement notice issued by West Oxfordshire District Council.
 - The notice was issued on 9 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission the erection of an unauthorised wall and gated enclosure.
 - The requirements of the notice are (1) permanently remove the whole structure, which includes the front and side walls, pillars, gate and metal railings, (2) permanently remove from the land all building materials deriving from the removal of the unauthorised wall and gated enclosure.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the ground set out in section 174(2)(f) 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 have lapsed.
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Preliminary Matters

1. Permitted development is set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Decision

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

Reasons

3. There is no argument that what has been alleged has occurred.
4. The appellant simply argues that he should be allowed to reduce the size of the wall/gate to comply with permitted development. It is the whole of the structure that has been built which is the unauthorised development, not just that which extends above the permitted development limits. The GPDO cannot grant retrospective planning permission. The Council say the wall as constructed does not comply with policy, so it is plain that the Council's requirements relate to remedying the breach and not impact on amenity.
5. The basis of a ground (f) challenge is that the steps are excessive and lesser steps would overcome the objections. It was held in *Tapecrow Ltd v FSS & Vale of White Horse DC* [2006] EWCA Civ 1744 that an Inspector has wide powers to decide whether there is any solution short of a complete removal to remedy the breach, which is acceptable in planning and amenity terms. In that case there was a ground (a). So, there may be cases where grounds (a) and (f)

can be used together to achieve more than could be gained under (f) alone. In this appeal there is no ground (a) to consider.

6. The planning permission granted by the GPDO may be a reasonable fall-back position and clearly some form of boundary would be permitted development if it complied with the relevant limitations and the appellant's intentions seem clear to build something. However, in this case, it is not simply one wall fronting the road, but a matter of the return walls and gates as well, and what is an appropriate height/arrangement for them under permitted development is a matter of interpretation. There is confusion as to what can be built, with the appellant asking at the site visit what needs to be done with the pillars and gate. It would not be possible to frame the requirements precisely from the current information to ensure an appropriate arrangement of the whole structure and could potentially lead to the need for further enforcement action, which would not be satisfactory to anybody.
7. This is sensibly a proper matter for a planning application where the design can be drawn and conditions imposed to define the permission. This is a relatively simple matter, so I consider that the 4 months allowed for compliance is sufficient to enable the appellant to make a planning application, which if approved would overcome the enforcement notice by dint of Section 173 (11). It is not excessive to require removal of the wall to overcome the breach that has occurred, and lesser steps cannot be precisely identified to overcome the breach. The appeal fails on ground (f).

Other Matters

8. It should be noted that human rights considerations do not arise in ground (f). The issue is strictly whether the requirements are excessive to remedy the breach or harm as the case may be.
9. I have considered the appellant's health issues and obvious difficulties that this has caused. I note that it is said that this prevented remedial action before the enforcement notice was issued, although the Council say that building works to the property continued even at that time. Unfortunately, now the notice has been issued action needs to be undertaken in relation to it. I also consider that agreeing remedial action with the Council through a planning application will be the best solution for the appellant.

Conclusion

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

Graham Dudley

INSPECTOR

