
Appeal Decisions

Site visit made on 11 October 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2022

Appeal A Ref: APP/E2001/C/22/3300669

Land south east of Bellfield, Arnold Lane East, Long Riston, East Riding of Yorkshire HU11 5HY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Philip Andrew Jenkinson against an enforcement notice issued by East Riding of Yorkshire Council.
- The enforcement notice was issued on 29 April 2022.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of gates, pillars and fences and the formation of a driveway and area of hardstanding.
- The requirements of the notice are:
 - a) On the Main Street frontage, remove the gates, fences, fence posts and pillars, or reduce all to no more than one metre in height.
 - b) Remove the hardstanding from the access off Main Street frontage and remove the driveway and hardstanding from the land edged red (the approximate position of the access, driveway and hardstanding are outlined in blue on the plan);
 - c) On completion of step b) cultivate the areas from which the access, hardstanding and driveway have been removed ready for reseeding, then re-seed with grass.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variation.

Appeal B Ref: APP/E2001/X/22/3298237

Land south east of Bellfield, Arnold Lane East, Long Riston, East Riding of Yorkshire HU11 5HY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Philip Andrew Jenkinson against the decision of East Riding of Yorkshire Council.
- The application Ref 22/00165/CLE, dated 18 January 2022, was refused by notice dated 16 March 2022.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is erection of gates and fence and use of access from Main Street.

Summary of Decision: The appeal is dismissed.

The Notice

1. The enforcement notice at section 2 refers to the Land being that shown edged red on the attached plan. However, the notice is clear on its face that it includes works beyond that red edge, that being the hardstanding within the area lined in blue as referenced within section 5 of the notice. As such, the notice should be corrected to make clear the Land is that shown edged red and blue on the attached plan. I am satisfied that I can make such a correction without injustice to the appellant or the LPA.

Appeal A on ground (c)

2. In an appeal on ground (c), it is for the appellant to demonstrate, on the balance of probabilities, that the matters stated as constituting a breach of planning control in the notice, do not constitute a breach of planning control.
3. S171A(a) of the Act sets out that carrying out development without the required planning permission amounts to a breach of planning control. The appellant's case is that the gates, fences and pillars are granted planning permission as permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) and therefore, those elements of the development did not constitute a breach of planning control at the date the notice was issued.
4. Article 3(1) of the GPDO grants planning permission for those developments defined as permitted development under Schedule 2. Class A of Part 2 of Schedule 2 states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted development. Development is not permitted, however, if it falls within the exceptions under paragraph A.1. A.1(a)(ii) states that the development is not permitted if the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1 metre above ground level.
5. The main dispute between the parties is whether or not the fence has been erected adjacent to a highway used by a vehicular traffic. There is no argument from the appellant that the driveway and area of hardstanding do not amount to a breach of planning control.
6. The term adjacent is not defined in the GPDO. Its common dictionary definition is 'near or next to something else'. Thus, a means of enclosure does not need to touch or abut the highway for it to be adjacent. Determining what constitutes 'adjacent' is a question of fact and degree.
7. The appellant states the pillars are set back 7.4m from the edge of the highway whilst the gates are set back 7.7m. Between the gates and the highway are two fences. Both fences are 2m in height and run broadly perpendicular to the highway rather than parallel to it. The northern element is around 10 degrees from the perpendicular and the southern element 13 degrees.
8. However, it seems to me that the fence, pillars and gates within it form one means of enclosure erected in a single operation. They are not clearly separable building operations. Functionally, all of the component parts perform the singular task of enclosing the Land. Thus, any part of that which is adjacent to the highway would take the whole of the means of enclosure outside the limitations under A.1(a)(ii).

9. In this instance, there is no footpath to the side of the road. Instead, there is a short verge of grass which is bound by the hedgerows and trees of the Land's boundary. The fences begin only a very short distance back from the highway verge. Whilst the arrangement of the works is such that they do not define the entirety of the boundary of the property, the angled layout of the fences closest to the highway appear are clearly intended to define and shape the physical boundaries of the Land at the point where it is accessed from the highway. Since the works have the effect of enclosing the land, and infill the gap within the hedgerow, I am satisfied that their purpose is to continue the functional boundary of the Land, in that it divides off private land from the public realm.
10. As a result, I consider as a matter of fact and degree, the fences are sited adjacent to the highway and consequently, given their height exceeds 1m, the gates, pillars and fences, as a single means of enclosure, do not meet the limitation under paragraph A.1(a)(ii) of Class A of Part 2 of the GPDO. I conclude, therefore, that the gates, pillars and fences element of the breach are not granted planning permission by Article 3(1) of the GPDO and thus amount to a breach of planning control.
11. The appeal on ground (c) fails.

Appeal A on ground (d)

12. In Appeal A on ground (d), it is for the appellant to demonstrate on the balance of probabilities, that at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters.
13. S171B(1) sets out that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
14. It is necessary therefore for the appellant to demonstrate that the erection of gates, pillars and fences and the formation of a driveway and area of hardstanding was substantially complete on or before 29 April 2018. The appellant does not argue that the gates, pillars and fences are immune from enforcement action. The only argument is advanced in respect of the access.
15. It is the appellant's case that an access point has been place for in excess of four years, pointing to Google Street View images from November 2008, April 2010 and August 2010 which show an agricultural gate between the hedgerows in the space where the development subject of the notice now exists. However, the breach of planning control in the notice does not allege the creation of an access. Rather, it alleges the formation of a driveway and area of hardstanding.
16. The appellant provides little evidence to demonstrate the gravel hardstanding laid between the gates and the highway was substantially complete four or more years prior to the issue of the notice. Nor has the appellant provided evidence that the driveway and hardstanding within the site was constructed on or before 29 April 2018. Indeed, the appellant accepts in their statement that the materials have not been in place for a period in excess of four years.

17. As a result, the appellant has not demonstrated, on the balance of probabilities that at the date the notice was issued, enforcement action in respect of the formation of a driveway and area of hardstanding could not be taken because the time for enforcement action had expired.
18. The appeal on ground (d) therefore fails.

Appeal A on ground (g)

19. An appeal on ground (g) is made on the basis that that the time for compliance with the notice is too short. The notice gives 3 months for compliance with the steps set out in paragraph 5. The appellant's argument is that step 5(c) of the notice relating to the requirement to reseed the area to between the highway and the gates within 3 months is too short as such works would need to be carried out in the first planting season. The LPA agrees with that. Nevertheless, I consider a variation to the notice along the lines suggested by the LPA requiring the cultivation and reseedling to be done "in the next planting season" too vague and uncertain.
20. Rather, I consider the simplest and most reasonable approach would be to vary the notice so that the appellant is required to cultivate and re-seed the areas from which the hardstanding and driveway has been removed within 1 year. This would ensure sufficient window of opportunity to carry out cultivation and ensure a planting season for the reseedling works to take place. I am satisfied that this would retain the necessary expediency since the works which result in planning harm will still be subject to the 3 month compliance period. I will therefore vary the notice so that paragraph 6(c) states within 12 months from the date the Notice takes effect.
21. The appeal on ground (g) succeeds to a limited extent.

Appeal B

Main Issue

22. In respect of an appeal against a refusal of an LDC application the main issue is whether the Council's decision to refuse the LDC application was well-founded.

Reasons

23. S191(2) of the Act makes clear that operations are lawful at any time if: (a) no enforcement action may be taken in respect of them; and (b) they do not constitute a contravention of the requirements of an enforcement notice then in force. The relevant date for consideration is the date the LDC application was made, 18 January 2022.
24. The development for which an LDC is sought is erection of gates and fence and use of access from Main Street. In respect of the gates and fence, the development is the same as that which is subject to the enforcement notice I have dealt with under Appeal A. I have found in respect of Appeal A on ground (c) that the fences, pillars and gates amount to a single means of enclosure which lies adjacent to a highway used by vehicular traffic. Thus, at the date the notice was issued, 29 April 2022, that aspect of the development was not granted planning permission by Article 3(1) of the GPDO and amounts to a breach of planning control.

25. In respect of Appeal B, no evidence has been advanced by the parties which indicates that there was any material change in circumstances between the submission of the LDC application on 18 January 2022 and the issue of the enforcement notice on 29 April 2022. As a result, I am led to also conclude that the fences, pillars and gates comprised in the LDC development did also not fall within the parameters of 'permitted development' under Class A of Part 2 of Schedule 2 of the GPDO. Consequently, those aspects of the development did not benefit from planning permission at the date the LDC application was made and were not, as such, lawful in respect of S191(2) of the Act since enforcement action may have been taken in respect of them.
26. Turning to the use of access from Main Street element of the LDC development. The appellant argues that the access to the site at this point has long been established and is immune from enforcement action. S171B(1) sets out that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
27. Satellite images are purported to show a field gate access present on that part of the site in question in December 2003, December 2005, May 2007, December 2007, September 2012, May 2016, July 2017 and September 2019. However, whilst a gap in the hedgerow is apparent in some images, beyond the image from December 2003 where a gate is clear, the remainder of the images are either of such distorted colouring or low resolution that it is difficult to ascertain with any degree of probability that a field gate access existed at the point in question at those times.
28. In addition, Google Street View images have also been provided dated from November 2008, April 2010 and August 2010. The images show that at the time they were taken, a gap in the hedgerow had been field with a metal field gate. The land between the gate and the road was laid to grass as a continuation of the grassed highway verge with no functional or physical delineation between the two. Moreover, the images show little evidence of any use of the access with any regularity. In August 2010, the grass is short and somewhat scorched but is no different to the remainder of the verge, presumably because of the time of year. Likewise, in April 2010 the vegetation on the land between the road and the gate is overgrown. There are no indications of tyre marks or any other impressions or tracks on the land. Thus, despite the presence of a field gate at various points, there is little evidence that an access at this part of the land was in situ four or more years prior to the notice being issued.
29. In contrast, works have now been undertaken to widen the gap in the hedgerow with a significant amount of gravel hardstanding laid between the road and the site to create a driveway. This has had the effect of creating a formalised access, which is intended to facilitate the access and exit of vehicles from the land to the highway. The appellant does not seek to argue that those works to create the access took place four or more years before the notice was issued. Indeed, the appellant accepts in their statement that the current materials may not have been in place for a period in excess of four years prior to the date of the LDC application.

30. As a result, I consider that, at the date the LDC application was made, the use of the access in the manner depicted on the submitted plans, would not have been lawful as enforcement action may have been taken in respect of it.
31. Overall, the development subject of the LDC application as a whole would not have been lawful at the date the application was made.

Conclusions

32. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of gates and fence and use of access from Main Street was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in S195(3) of the 1990 Act as amended.

FORMAL DECISIONS

Appeal A

33. It is directed that the enforcement notice be corrected by:
- inserting the words "and blue" after the words "edged red" in paragraph 2 of the notice.
34. And varied by:
- Deleting the words "three (3)" and substituting them for the words "twelve (12)" from section 6(c) of the notice.
35. Subject to this correction and variation the appeal is dismissed and the enforcement notice is upheld.

Appeal B

36. The appeal is dismissed.

J Whitfield

INSPECTOR