The Planning Inspectorate

Appeal Decision

Site visit made on 9 January 2023

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2023

Appeal Ref: APP/X4725/C/22/3300372
Land at 2 Regent Street, South Hiendley, S72 9AZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Phill Rodgers against an enforcement notice issued by Wakefield Metropolitan District Council.
- The notice was issued on 6 May 2022.
- The breach of planning control as alleged in the notice is: Without planning permission erection of a boundary fence and gate (shown as a blue dashed line on the attached plan) and a shed to the front (shown hatched black on the attached plan).
- The requirements of the notice are: i) remove the shed from the front of the land; 2) reduce the height of the fence and gate to not more than 1 metre; 3) remove all resultant debris from the land.
- The period for compliance with the requirements is 8 weeks.
- The appeal is proceeding on the ground set out in section 174(2)(d) 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.

Decision

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

The appeal on ground (d)

2. This ground is that, at the time the enforcement notice was issued, it was too late to take enforcement action. The onus is on the appellant to demonstrate his case on the balance of probability.

3. The courts have held that, in a case involving operational development, the relevant 4 year period begins to run from the date when the operations are "substantially completed"[1]. Therefore, the appellant would need to demonstrate that the development was substantially completed by 6 May 2018.

4. In his ground of appeal, the appellant states that "the fence in question has been in place for 4 years as I started installing fence in April 2018". However, this does not clarify when the operations were substantially complete. Furthermore, it conflicts with an earlier statement made by the appellant in his retrospective application for planning permission for the fence, dated 7 August 2018 (ref: 18/01954/ FUL). There, he stated that the work commenced on 1 July 2018 and was completed on 2 July 2018. This statement was made only 5 weeks after the then claimed date of development, when events should have been reasonably fresh in the memory.

[1] Ewen Developments v SSE [1984] JPL 439

5. The recently submitted photographs, with a date of 1 June 2018 added to the caption above them, appear to show the fence then under construction. They are inconsistent with the earlier evidence but do not assist the appellant as they are, in any event, after the relevant date of 6 May 2018.

6. There is no claim by the appellant that the shed, which has now been removed, was erected more than 4 years prior to the issue of the notice. The Council's evidence appears to demonstrate that it was erected some time after the fence.

7. Based on the evidence before me I conclude that the appellant has failed to demonstrate, on the balance of probability that the development was substantially complete more than 4 years prior to the date of issue of the notice. The appeal on ground (d) therefore fails.

8. As there is no appeal on ground (a), I am unable to take account of the planning merits of the development, although I note that an appeal against the Council's decision to refuse the application referred to in para.4 above was dismissed in May 2019 (PINS ref: APP/X4725/D/19/3220175).

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

B S Rogers

INSPECTOR