The Planning Inspectorate

Appeal Decision

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2023

Appeal Ref: APP/N4720/C/22/3309252
Land at 8A Firthfields, Garforth, Leeds LS25 2HD

- 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 Craig Wilkinson against an enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 20 September 2022.
- The breach of planning control as alleged in the notice is Without planning permission the unauthorised erection of a stone wall, posts and infill fence panels to front and side, with wooden gates exceeding one metre in height adjacent to the highway used by vehicular traffic.
- The requirements of the notice are Either 1. Lower the fence, gates and all stone posts and fixings to no higher than one metre in height adjacent to the highway used by vehicular traffic, to bring it into compliance with the rules set out in Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Or 2. Remove the fence, gates, stone wall and posts, and fixings from the property in their entirety And Remove all detritus from the property in connection with 1 or 2 above within 7 days of the completion of the above works.
- The period for compliance with the requirements is six weeks.
- The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

2. Having regard to the nature of the appeal, the matters in dispute and the evidence that has been presented I considered that it was unnecessary for me to visit the site in this case. Neither the appellant nor the Council have objected to the appeal proceeding on this basis.

3. I acknowledge that both the retention of the alleged development and modifications to it have been the subject of previous unsuccessful appeals[1]. However for the avoidance of doubt, in a case of this type the merits of the development are not before me for consideration.

[1] Appeal refs APP/N4720/D/19/3242586 & APP/N4720/D/22/3301072

The appeal on ground (d)

4. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control. S171B(1) of the Act provides that no enforcement action may be taken in respect of any unauthorised operational development after the end of the period of four years beginning with the date on which the operations were 'substantially completed'.

5. The onus rests with the appellant to prove their case on the balance of probability. In order to succeed on this ground, in accordance with Section 171B(1) of the Act, it would be necessary for the appellant to show, on the balance of probability, that the alleged development was substantially completed by 20 September 2018.

6. The appellant, in support of their case, has provided a copy of a dated invoice received from the building contractor who completed the alleged works. He has also provided date and time stamped photographs of the development.

7. The builder's invoice, which is dated 11 July 2018, gives a listed description of various building works, which include removal of 'old wall at front…'; the provision of a 'new artificial stone wall at front and sides with pillars…' and the fitting of electric gates and insertion of fence panels. The invoice states that the capping is yet to be confirmed and so is not in the price.

8. The appellant's dated and time stamped photographs are shown to have been taken in close succession on 30 August 2018. They show what appears to be the finished wall, posts (with capping), fencing and gates, illuminated by external lighting during hours of darkness.

9. A signed statement from the appellant and his wife is also provided. This states that the work, which also included a new driveway, started in July 2018 and was completed by August 2018.

10. The Council says that the appellant's building invoice does not indicate the dates when the work was actually begun or was completed. It also provides in evidence, copies of photographs taken by a Council officer during an unrelated site visit to the property on 30 April 2018, showing the alleged works not to have commenced at that time. The Council says that if the builder's invoice is correct, then this means the building work would need to have been started and completed within a time window of a little over two months.

11. Moreover the Council refers to the planning application form submitted by the appellant's wife with a view to gaining retrospective planning permission for the alleged works[2]. It is recorded on this form that the development was commenced on 11 March 2019 and completed on 6 May 2019. The Council states that these dates clearly contradict the aforementioned development timeframe relied on by the appellant. The appellant concedes that the dates given on the application form were incorrect; but that this was a genuine mistake, and that the significance of how these dates would be used was not appreciated.

12. There is nothing that leads me to doubt the veracity of the appellant's invoice document and photographs, or that the latter appear to show the structure as

[2] Application Ref 19/05157/FU

substantially completed. Neither, given the inherently uncomplicated nature of the works, including the new driveway and the alleged boundary structure, does it seem to me unrealistic that the July to August development window identified by the appellant could be achieved.

13. The appellant's account suggests that the builder's invoice was issued prior to the work being completed. Indeed this position is substantiated by entries on the invoice itself stating "Cappings yet to confirm…" and that the driveway finish was to be decided at a later date, therefore suggesting works were incomplete at that time. However, it seems to me that there would be nothing necessarily odd or unusual about an invoice being issued once services were underway and prior to completion. When considered in combination with the timing of the photographs provided of completed work, I consider the invoice serves to bolster the appellant's account.

14. I sympathise with the Council that if information given on the application form is accepted as being inaccurate, then it is aggrieved and frustrated about the appellant's failure to appreciate the significance of this.

15. Notwithstanding this, the explanation provided by the appellant that inaccurate information was mistakenly given on the form about the development dates and there was a failure to appreciate the significance of this information because of a lack of engagement of professional assistance, seems to me to be plausible.

16. Whilst the Council suggests that the timing of its decision to enforce was based on information supplied by the property owners on the application form, I am mindful that there would have been more formal investigative powers available to the Council in this case, in order to ascertain the timing of the development. In this regard it would have been possible for the Council to have served a Planning Contravention Notice, in relation to which there are penalties for recipients who fail to respond or provide false information, following the initial appeal decision on the development being issued in February 2020.

17. For the reasons given above, I conclude on the balance of probability, that the alleged development was substantially completed by not later than August 2018 and therefore more than four years prior to the enforcement notice being issued. Accordingly, the development is immune from enforcement due to the passage of time.

18. I therefore conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed. In these circumstances, the appeal on ground (g) does not fall to be considered.

R Merrett

INSPECTOR