



Appeal Decision

Site visit made on 15 December 2023

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2024

Appeal Ref: APP/N4720/C/23/3326283

Land at Bramham House, 80 Leeds Road, Bramhope, Leeds LS16 9BQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Pardeep Singh Gill against an enforcement notice issued by Leeds City Council.
 - The notice was issued on 29 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of gates exceeding one metre in height located adjacent to a highway used by vehicular traffic.
 - The requirements of the notice are: dismantle the unauthorised gate and remove any resulting debris from the land.
 - The period for compliance with the requirements is two months.
 - 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.
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Decision

1. It is directed that the enforcement notice is corrected by:

In section 3, MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL, the deletion of the word "gates" and the substitution of the word "gate", and the deletion of the words "exceeding one metre in height located adjacent to a highway used by vehicular traffic".

2. Subject to the corrections, the appeal is dismissed, and the enforcement notice is upheld.

Matters concerning the Enforcement Notice

3. It is incumbent upon me to put the enforcement notice (Notice) in order. S176(1)(a) and (b) of the 1990 Act¹ provide for me to correct any defect, error or misdescription in an enforcement notice or to vary the terms of an enforcement notice, provided no injustice to the appellant or local planning authority would be caused.
4. The operational development to which the Notice is directed is the 'erection of gates', there is however only one sliding gate. The allegation goes on to include the words 'exceeding one metre in height adjacent to a highway used by vehicular traffic'. These words do not of themselves form part of the matter that appears to constitute the breach of planning control. Instead, they provide a reason planning permission is required and describe the location of the development. As such, they are superfluous to the matter which constitutes the breach of planning control and shall be deleted.

¹ Town and Country Planning Act 1990 as amended

5. The corrections set out above provide clarity to the matter alleged and would cause no injustice to either the appellant or the local planning authority.

Preliminary Matters

6. The appellant has provided a copy of a lawful development certificate² (LDC) confirming that 'gates to front' of the appeal property would be permitted development. The proposed plan, found in Appendix C to the Council's Statement, shows that a gate would be located within the site, behind the existing gate's current position. A dimension is not detailed for the proposed set back of the gate. However, the 1:50 scale drawing shows the width of the gate to be '5000', suggestive of a measurement given in millimetres, equating to 5 metres. This plan shows the set-back distance to be greater than the width of the gates. It would therefore be reasonable to conclude that the gate is proposed to be located more than 5 meters back within the site for the LDC.
7. The reason given for the LDC being granted is 'The plans submitted demonstrate that on the balance of probabilities the proposed gates do meet the criteria of permitted development as set out in Part 2 Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015' (the GPDO). I see no reason to disagree with this conclusion.
8. The LDC could be evidence of a hidden ground (c) appeal, where the matter alleged would not constitute a breach of planning control as it benefits from deemed planning permission. However, the LDC relates to a **proposed development** (my emphasis) where, presumably, the existing gate would be dismantled and relocated more than 5 metres back into the site. This LDC does not therefore relate to the gate in its current position, which is the subject of the Notice.
9. Furthermore, while Part 2, Class A of Schedule 2 of the GPDO confirms that the erection of a gate is permitted development, Class A.1(a)(ii) confirms that any gate erected adjacent to a highway used by vehicular traffic which exceeds 1 metre above ground level is not permitted development. The gate referred to in the Notice exceeds one metre in height and is adjacent to a highway used by vehicular traffic. It does not therefore constitute permitted development and does not benefit from deemed planning permission afforded by Part 2, Class A and Article 3(5) of Schedule 2 of the GPDO.

Appeal on ground (d)

10. An appeal on this ground is that, at the date the Notice was issued, no enforcement action could be taken in respect of the breach of planning control as corrected. It is for the appellant to show, on the balance of probability, that the gate was erected four or more years before the Notice was issued. The material date is 29 June 2019.
11. The appellant has provided no supporting text or explanation with their documentary evidence. The Landlord Supplies invoice is dated 20 August 2018 and specifies 'supplied + fitted electric gate (sliding gate) remote controls. Paid in cash...on 23.08.18'. While the name and address fields on the invoice tally with those of the appellant and appeal site, the delivery address field is blank. Even if this invoice does relate to the gate referred to in the Notice, while the invoice may have been paid on 23.08.18, this is not confirmation that the gate

² Application reference number: 21/04080/CLP Lawful Development Certificate dated 10 May 2021

was erected on or before that date. This invoice does not therefore show with certainty that it relates to the gate the subject of the Notice or that the gate was erected before the material date.

12. The Rolling Center (innovative solutions for metal gates and doors) invoice is dated 21 May 2019 and specifies it is for '7.5m Cantilever Kit Galv Track Max 600kg (3 + 4.5m). Cash sale'. While this invoice lists the appellant's name, 'Mr Gill', there is nothing to link it to the appeal address. It could be assumed, given the specified nature of this business, that the purchase of this track has something to do with the gate identified in the Notice. However, if it is a track that the sliding gate, referenced in the Landlord Supplies invoice runs on, it would seem unusual for the track to be invoiced, and presumably installed, some 9 months after the gate had allegedly been erected. This invoice does not therefore show with certainty that it relates to the erection of the gate identified in the Notice.
13. The appellant provided a typed letter from the occupier of 78 Leeds Road. This typed letter sets out that the author has lived at their address since 2017 and that their 'neighbours at 80 Leeds Road, installed the gate, illustrated on the attached photograph, in August 2018'. The photograph shows the gate the subject of the Notice. The letter is succinct and contains no anecdotal evidence to suggest why they recall the gate being erected in August 2018. Given the lack of detail, and that it is not a sworn declaration, I attribute little weight to this typed letter.
14. A 'Retrospective application for 2m sliding gate' was made on 24 June 2020. The copy of the form provided for that application states that the development was started on 1 October 2019 and completed on 4 October 2019. The accuracy of those dates is questionable given that the Council states that they were made aware of the gate on 27 September 2019, and they provide photographs which appear to show the gate complete when they visited the site on 3 October 2019. Regardless of whether any of these dates are accurate, they all occur after the material date.
15. The courts have held that the appellant's own evidence does not have to be corroborated by 'independent' evidence in order to be accepted. However, the Council's evidence makes the appellant's version of events less than probable. Furthermore, I find the appellant's evidence to be imprecise and ambiguous.
16. For the reasons given above, the appellant has failed to show, on the balance of probability, that the gate has been erected for 4 or more years. The appeal on ground (d) fails.

Appeal on ground (g)

17. An appeal on this ground is that the period specified in the Notice in accordance with s173(9) of the 1990 Act falls short of what should reasonably be allowed. The appellant claims two months is not a reasonable period of time in which to dismantle the gate and remove any resulting debris from the land. They have not however provided any reasons for their claim, nor suggested what period they would consider to be reasonable.
18. The gate and its sliding mechanism is not a complicated construction. Dismantling the gate would therefore not take any significant amount of time. I

find two months is a reasonable period to comply with the requirements set out in the Notice. The appeal on ground (g) fails.

Overall Conclusion

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

M Madge

INSPECTOR