



Appeal Decision

Site visit made on 6 February 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2024

Appeal Ref: APP/C3620/C/22/3303073

The land known as 2 The Nest, Abinger Road, Coldharbour, Dorking, Surrey RH5 6HD

- 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 Jonathan Tiedy against an enforcement notice issued by Mole Valley District Council.
 - The enforcement notice was issued on 17 June 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the carrying out of an unauthorised development creating a retaining wall with external cladding.
 - The requirements of the notice are: (1) Reduce the height of the wall by 300mm (equivalent to the removal of 4 courses of brick or 1.5 blocks). (2) Remove the brick cladding from the face of the blockwork and replace with brickwork to match the local red/orange brick used within the traditional buildings and boundary walls in the village (for example, refer to the brickwork of the neighbouring building, 1 & 2 Honeysuckle Cottage). The wall should have a rounded capping formed from either half round bricks or of rounded stone, but not brick on edge. (3) The mortar should be a lime/sand mix comprising mainly sharp sand and struck vertically and pointed so as to expose the aggregate, rather than a smooth/tooled finish.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) 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 as amended have lapsed.
-

Summary of Decision

1. The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Preliminary Matter

2. As there is no ground (a) appeal before me, I am unable to consider the planning merits of the walling. Therefore, matters such as planning policy, planning conditions, the Conservation Area or structural integrity of the walling do not fall to be considered.

The ground (b) appeal

3. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control has not occurred as a matter of fact.

4. The appellant contends that the use of the term 'external cladding' is misleading and that the notice should be corrected to 'brick cladding' as the walling has been constructed from blockwork to ensure strength with a single brick skin around.
5. Based upon what I observed during my site visit I concur that this is the case, and that the notice can be corrected in the interests of precision and without injustice.
6. The appeal on ground (b) therefore succeeds to this extent.

The ground (f) appeal

7. The purpose of the enforcement notice is to remedy the injury to amenity. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to achieve this.
8. The evidence before me demonstrates on the balance of probabilities that the walling was constructed as a single building operation which is identifiable as the walling finished in the same brickwork. The majority of this is then the subject of the enforcement notice, given the walling flanking the inner-most set of steps falls outside the land affected.
9. In taking enforcement action, the Council has under-enforced. This is to say that the walling can remain, subject to requirements that would change its appearance. These requirements do not appear to be based upon the availability of permitted development rights, but rather are intended to ensure a more traditional appearance.
10. The notice requires a reduction in height of the walling by 300mm, or 4 courses of brickwork. However, the walling is set at significantly different heights to follow the contours of the site, and so reducing the height of the entirety of the walling would be excessive. Given the intentions of the Council, it would however not be excessive to require the removal of 2 courses of brickwork to enable the stylised capping to then be replaced.
11. The appellant then highlights there are other means available to alter the colour of the brickwork, such as by applying a tint. I accept this would be a viable option which should be open to the appellant, as it would otherwise be excessive to only require the removal of the brickwork. It is then vague and imprecise to require the brickwork to match 'traditional buildings and boundary walls in the village'. Instead, reference can remain to 1 & 2 Honeysuckle Cottage as well as the dwelling associated with the appeal site itself.
12. I then have very little evidence to demonstrate that it would be excessive to require for the walling to be capped from either half-round bricks of matching colour or rounded stone, which is a clear requirement of the notice, or similarly in respect of the pointing requirements.
13. That the brickwork, height and mortar would not then match the walling flanking the inner-most set of steps is not a relevant consideration for the purposes of a ground (f) appeal. It would however remain within the gift of the appellant to choose to alter this brickwork as well, should they wish to do so.

14. Accordingly, I will vary and rationalise the requirements of the notice so they are neither excessive to remedy the injury to amenity nor vague and imprecise. Whilst this results in 4 requirements, this is necessary on account of the stages of work that need to be undertaken and options now available to the appellant. It also makes the steps more precise.

15. The appeal on ground (f) therefore succeeds to this extent.

The ground (g) appeal

16. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short and that 6 months is required to enable a specialist contractor to be found and the works undertaken in a safe and effective manner.

17. Given 4 months has been afforded, on-balance, I do not consider that the additional period requested to enable the works to be undertaken safely and effectively would unduly perpetuate the breach of planning control.

18. The appeal on ground (g) therefore succeeds to this extent.

Overall Conclusion

19. For the reasons given above I will correct and vary the enforcement notice accordingly, prior to upholding it. The appeal under grounds (b), (f) and (g) therefore succeed to that extent.

Formal Decision

20. It is directed that the enforcement notice be corrected and varied by:

- replacing the words '*external cladding*' with '*brick cladding*' in section 3 of the notice;
- delete requirements 5. (1), 5. (2) and 5. (3) in their entirety and replacing them with the words:
 - (1) *Remove the top 2 courses of brickwork from the walling and any resultant exposed blockwork.*
 - (2) *Replace or permanently change the colour of the remaining external facing brickwork to match as closely as possible the colour of the existing brickwork on the dwellinghouse (2 The Nest) or those of 1 & 2 Honeysuckle Cottages.*
 - (3) *Replace or amend the mortar with a lime/sand mix comprising mainly sharp sand and struck vertically and pointed so as to expose the aggregate, rather than a smooth/tooled finish.*
 - (4) *Finish the walling with a rounded capping formed from either half-round bricks of matching colour, or rounded stone, and using matching mortar.*
- substituting '*6 months*' as the time for compliance in section 6 of the notice.

21. Subject to these correction and variations the enforcement notice is upheld.

Paul T Hocking

INSPECTOR