



Appeal Decision

Site visit made on 5 February 2024

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 March 2024

Appeal Ref: APP/G2245/C/22/3298443

White Gables, High Street, Farningham, Kent DA4 0DB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jason Maloney against an enforcement notice issued by Sevenoaks District Council.
 - The notice was issued on 7 April 2022.
 - The breach of planning control as alleged in the notice is described as, "Without planning permission, the erection of a means of enclosure higher than 2 metres from ground level (as shown in the approximate position hatched blue line on the plan)".
 - The requirements of the notice are:
 - Reduce the means of enclosure at the rear boundary so that the overall height would measure no higher than 2m from the nearest highest point of ground level.
 - Remove any resultant materials from the land.
 - The period for compliance with the requirements is: 2 months.
 - The appeal is proceeding on the ground set out in section 174(2)(b) 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 of the Notice, the deletion of the word "hatched" and its substitution with the words "of the dashed"; and
 - In Section 5 of the Notice, the deletion of the words, "Reduce the means of enclosure at the rear boundary so that the overall height would measure no higher than 2m from the nearest highest point of ground level", and their substitution with the words, "Reduce the height of the means of enclosure at the rear boundary so that the overall height measures no higher than 2m above ground level."
2. Subject to the corrections, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

3. Although the appellant has appealed only on ground (b), parts of his case relate to matters normally considered as an appeal under ground (d). Aspects of the appellant's case may also be considered to fall within the scope of a ground (c) appeal.
4. In each case the Council has had the opportunity to respond to the case made by the appellant, and there would be no injustice to the Council, or the

appellant, were I to consider these matters as ground (c) and ground (d) appeals respectively.

5. I have therefore done so below and, given the similarities of the arguments in respect of grounds (b) and (c), I have considered those grounds together.

The Notice

6. I am required to ensure the Notice is in order, considering Section 173 of the Town & Country Planning Act 1990 (the Act), which relates to the content and effect of an enforcement notice.
7. In Section 3 of the Notice, the alleged breach of planning control refers to the position of the means of enclosure as "shown in the approximate position hatched blue line on the plan". For clarity, it would be better described as 'shown in the approximate position of the dashed blue line on the plan'.
8. In Section 5 of the Notice, the first requirement states, "Reduce the means of enclosure at the rear boundary so that the overall height would measure no higher than 2m from the nearest highest point of ground level." This requirement would be clearer if corrected to, 'Reduce the height of the means of enclosure at the rear boundary so that the overall height measures no higher than 2m above ground level.'
9. Neither change would alter the substance of the allegation or requirements, and there would be no injustice to either party were I to correct the Notice accordingly.

The appeals on grounds (b) and (c)

10. Appeals on ground (b) are made on the basis that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact. Appeals on ground (c) are made on the basis that there has not been a breach of planning control.
11. It was clear at my site visit that a means of enclosure higher than 2m above ground level had been erected on the rear boundary, and I have seen nothing to indicate that that was not the case at the time the Notice was issued. It was also located in the approximate position shown by the dashed blue line on the enforcement notice plan. The alleged breach has therefore occurred as a matter of fact.
12. Section 55 of the Act defines development as "the carrying out of building, engineering, mining or other operations in, on, over or under land ...". It also specifically includes operations normally undertaken by a person carrying on business as a builder. Section 57 states that planning permission is required for the carrying out of any development of land.
13. The appellant advises there was no need to submit a planning application for a 3m length of the trellis. I have been provided with no evidence of any planning permission or Certificate of Lawfulness granted by the Council for boundary treatments exceeding 2m in height. Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure in certain circumstances. However, A.1(b) of that Class excludes any other gate, fence,

wall or means of enclosure erected or constructed that would exceed 2 metres above ground level. The development was therefore not granted planning permission by Article 3(1) of the GPDO.

14. With the evidence before me, there has therefore been a breach of planning control, and the breach of planning control alleged has occurred.

15. The appeals on grounds (b) and (c) therefore fail.

The appeal on ground (d)

16. Appeals on ground (d) are made on the basis that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.

17. The appellant states that a 5m section of the existing fence has been in place since 2018 and the additional 3m section was added in 2019. He argues that he does not need to submit a planning application for a 3m length of trellis that has been in place since 2019.

18. Section 171B(1) of the Act provides that no enforcement action may be taken against any unauthorised operational development after the end of the period of four years from the date the operations were substantially completed.

19. A four year period beginning in 2019 would run until 2023, after the date the enforcement notice was issued. At the time the Notice was issued, enforcement action could therefore be taken against the 3m length of trellis.

20. The onus is on the appellant to make his case, and he does not state the date in 2018 when he claims the 5m section of fencing was substantially completed. A period of four years from 2018 would run until 2022 and the enforcement notice was issued on 7th April 2022. The fence would therefore need to have been substantially complete on or before 7 April 2018 to be immune from enforcement action. However, there is no evidence before me demonstrating the date the fencing was substantially completed, and therefore whether it was before or after 7th April 2022.

21. With the evidence before me it has therefore not been demonstrated that it was too late to take enforcement action at the time the notice was issued.

22. The appeal on ground (d) therefore fails.

Conclusion

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

Peter White

INSPECTOR