



Appeal Decision

Site visit made on 5 March 2024

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 April 2024

Appeal Ref: APP/Z3635/C/22/3303322

1A Langley Road, Staines upon Thames, Surrey, TW18 2EH

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended (the Act).
- The appeal is made by Mrs Shirley Woods against an enforcement notice issued by Spelthorne Borough Council.
- The notice was issued on 24 June 2022.
- The breach of planning control as alleged in the notice is the unlawful development of:
 - a) A lean-to structure the approximate location shown in red on the attached plan entitled Plan 1 - Location of Alleged breaches of Planning Control (Item 1 on Plan 1)
 - b) Fencing and gates the approximate location shown in yellow on the attached plan entitled Plan 1 - Location of Alleged breaches of Planning Control (Item 2 on Plan 1)
 - c) Racking the approximate location shown in pink on the attached plan entitled Plan 1 - Location of Alleged breaches of Planning Control (Item 3 on Plan 1)
 - d) Outbuilding/shed for storage of spray painting materials the approximate location shown in dark green on the attached plan entitled Plan 1 - Location of Alleged breaches of Planning Control (Item 4 on Plan 1)
 - e) Metal container with flue for spray painting the approximate location shown in light blue on the attached plan entitled Plan 1 - Location of Alleged breaches of Planning Control (Item 5 on Plan 1)
 - f) Outbuilding for storage the approximate location shown in orange on the attached plan entitled Plan 1 - Location of Alleged breaches of Planning Control (Item 8 on Plan 1)
 - g) Metal container for office use the approximate location shown in light green on the attached plan entitled Plan 1 - Location of Alleged breaches of Planning Control (Item 6,7,9 on Plan 1)
- The requirements of the notice are to:
 - a) Remove permanently the lean-to structure the approximate location shown in red on the attached plan entitled Plan 1 (Item 1 on Plan 1)
 - b) Remove permanently the fencing and gates the approximate location shown in yellow on the attached plan entitled Plan 1 (Item 2 on Plan 1)
 - c) Remove permanently the racking the approximate location shown in pink on the attached plan entitled Plan 1 (Item 3 on Plan 1)
 - d) Remove permanently the outbuilding/shed for storage of spray painting materials the approximate location shown in dark green on the attached plan entitled Plan 1 (Item 4 on Plan 1)
 - e) Remove permanently the metal container with flue for spray painting the approximate location shown in light blue on the attached plan entitled Plan 1 (Item 5 on Plan 1)
 - f) Remove permanently the outbuilding for storage the approximate location shown in orange on the attached plan entitled Plan 1 (Item 8 on Plan 1)
 - g) Remove permanently the metal container for office use the approximate location shown in light green on the attached plan entitled Plan 1 (Item 6,7,9 on Plan 1)
 - h) Remove permanently all resultant material from steps a) – g)
- The period for compliance with the requirements is 2 months.

- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), (g) of the Act.
- Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeals fails and the enforcement notice is upheld with variation as set out below in the Formal Decision.

Preliminary matters

1. At the time of my visit the site had been cleared and the elements listed within the notice had been removed. Notwithstanding this, my consideration of the appeal must be on the basis of the development subject to the notice, regardless of any subsequent changes to the development made on site. Any planning permission which may be granted under the appeal on ground (a) relates to the development subject to the notice. I have been provided with sufficient information¹ from the time around when the notice was issued to allow me to make an assessment of the relevant matters.
2. The parties agree that the site has an existing permitted use for vehicle repairs and servicing. Permission for a detached single-storey workshop building for the servicing of minibuses was granted in July 2002 (ref 02/00009/FUL). Questions have been raised by the Council regarding compliance with the conditions of that permission, but this appeal does not relate to a breach of conditions.
3. The Council state that the operational development covered by the notice does not benefit from permitted development rights under Part 7, Class H of The Town and Country Planning (General Permitted Development) (England) Order 2015, as the structures are within 5m of a boundary. The appellant does not contest this and I have no reason to reach a different conclusion.

The appeals on ground (c)

4. An appeal on ground (c) is that the matters alleged, if they occurred, do not constitute a breach of planning control. The appeal on ground (c) is only in regard to the racking marked 3 on the plan attached to the notice.
5. Section 55 of the 1990 Act defines development, including 'the carrying out of building, engineering, mining or other operations', with section 336 of the Act defining a building, including 'any structure or erection'. Case law² has established that size, permanence and physical attachment to the ground are important considerations in deciding if something is operational development.
6. The racking may technically have been moveable, but I have no evidence that it was intended to be, or in fact was, moved on a regular basis. Given its height and the weight with added tyres, I assume it would have been attached to the floor and/or the adjacent fencing to ensure stability and safety. On the information available to me, I consider the racking to constitute operational development.
7. Therefore, I conclude that the matter stated in the notice, with regard to the racking, constitutes a breach of planning control. Accordingly, the appeal on ground (c) fails.

¹ Including photographs, dated between May 2021 and March 2022, linked to the LPA officer report of June 2022.

² Including *Skerritts of Nottingham Limited v SoS for the Environment, Transport and the Regions* [2000].

The appeal on ground (a) and the deemed planning application

8. An appeal on ground (a) is that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed planning application are derived from the allegation. Hence, in summary, planning permission is sought for the retention of a lean-to structure; fencing and gates; racking; outbuilding/shed for storage of spray painting materials; metal container with flue for spray painting; outbuilding for storage; and metal container for office.

Main issues

9. The main issues are the effect of the development on:
- The character and appearance of the site and the surrounding area; and
 - The living conditions of neighbouring residential occupants, with regard to outlook.

Reasons

10. The site consists of an authorised workshop building constructed in metal sheeting, and an open yard. The items subject to the appeal are located within the yard. The yard fronts onto Langley Road in a primarily residential area and is bounded and directly overlooked by a range of adjoining and nearby residential properties.
11. The established use of the site would have had a non-residential character and appearance to some extent. However, the primary authorised use of the open yard area was for vehicle parking, which is not substantially out of keeping with the residential area. The items subject to the notice are numerous, of a substantial scale and an ad hoc mix of construction methods and materials. As a result of the unauthorised development, the appearance of the site became more cluttered and less attractive, with an industrial character significantly out of keeping with the surrounding residential area. The yard is highly visible from the street as well as from surrounding residential dwellings. As such, the development resulted in the site being highly out of keeping with its surroundings, to the detriment of local character and appearance as well as the outlook of neighbouring residents.
12. At the time the notice was issued, there was a disused and mostly derelict former tin works adjacent to one side of the site. This has subsequently been cleared and a housing development constructed, which is near to completion. While I have based my assessment on the context at the time the notice was issued, this new development reinforces the residential character of the area and increases the number of dwellings overlooking the site. I note the need to store products and materials safely. Notwithstanding this I have been provided with no information to indicate such storage could not have been accommodated within the authorised workshop building.
13. I conclude that the development causes unacceptable harm to both the character and appearance of the site and the surrounding area, and the living conditions of neighbouring residential occupants. Consequently, the development does not comply with Policy EN1 of the Spelthorne Borough Council Core Strategy and Policies Development Plan Document (February 2009). Amongst other things, this seeks to ensure that development makes a

positive contribution to the street scene and the character of the area and achieves a satisfactory relationship to adjoining properties, avoiding significant harmful impact in terms of outlook.

Conclusion on ground (a) and the deemed planning application

14. The appeal on ground (a) fails and planning permission is refused, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, subject to conditions, as set out in the decision.

The appeal on ground (f)

15. An appeal on ground (f) is that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The notice requires the removal of the listed items, including the fencing and gates, in order to remedy the breach. The appellant argues that a requirement to remove the fencing and gates entirely is excessive, as fencing and gates to a height of 2 metres could be constructed under permitted development rights. Hence, the appellant suggests a lesser measure of reducing the height of the fencing and gates to 2 metres.
16. The fencing and gates may not benefit from permitted development rights under Part 7, Class H of the GPDO, and may not be a necessity for site functioning, particularly if all work was carried out inside permitted buildings and not in the yard (as stipulated by condition under permission reference 02/00009/FUL). Notwithstanding this, a 2 metre fence and gates within the site could benefit from rights under Part 2, Class A.1.b of the GPDO, which allows for the erection of a gate, fence, wall or other means of enclosure that would not exceed 2 metres above ground level.
17. Permitted development rights cannot be claimed retrospectively by making changes which return the development to compliance with permitted development limits. Notwithstanding this, such rights could be claimed in the future, following compliance with the notice, and would enable the appellant to replace the fencing and gates to a height not exceeding 2 metres. This represents a realistic 'fallback position' for the appellant.
18. The enforcement regime is intended to be remedial rather than punitive. In these circumstances, allowing the appellant to reduce the height of the fencing and gates, is a clear alternative to total removal. A height reduction would achieve essentially the same outcome as removing the fencing and gates and then replacing them, but with less cost and disruption for the appellant. By not including this lesser option, I consider the requirements of the notice to be excessive.
19. There is no scheme before me setting out a detailed proposal for modifying the fencing and gates. However, I do not consider it necessary in this instance since it would be a straightforward matter to describe an amended requirement in the notice so as to reflect the permitted development rights available. Adopting this approach would not result in any less control over the final outcome than if the appellant complied with the notice as served, prior to exercising their permitted development rights. I will therefore set this out as an alternative to the option of total removal.

20. For the reasons set out above, the appeal on ground (f) succeeds with regard to the fencing and gates only. I have varied the requirements of the notice accordingly, as set out in the formal decision.

Appeal on ground (g)

21. An appeal on ground (g) is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is 2 month.
22. Given the harm I have identified above, it is necessary to secure a resolution to the breach as soon as possible. The appellant has been aware of the matters raised by the Council for some time and the size and nature of the items means that removing them from the site need not be a particularly time consuming or complex process. I acknowledge that the appellant would like time to re-arrange operations on site to accommodate the loss of the structures, but they have presented me with no detail to fully justify their requested 4 months.
23. Consequently, I am satisfied that the compliance period of two months stated in the notice would be sufficient to carry out the requirements of the notice. Therefore, the appeal on ground (g) fails.

Conclusion

24. For the reasons given above, I conclude that the appeal should not succeed. I shall refuse the deemed planning application and uphold the enforcement notice, with a variation.

Formal Decision

25. It is directed that the enforcement notice is varied as follows:
- In schedule 4, 'steps required to be taken', add the words "Or, lower the height of this fencing and gates, so that no part exceeds a height of 2 metres above ground level." to the end of requirement b).
26. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

H Davies

INSPECTOR