

Appeal Decision

Site visit made on 15 January 2025

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2025

Appeal Ref: APP/W2845/C/23/3329673

The property and associated land at 2 Greenfield Road, Northampton

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Richard Berkshire against an enforcement notice issued by West Northamptonshire Council.
- The notice was issued on 10 August 2023.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a wooden structure to the front elevation of the garage to a height in excess of 2.5 metres ("the wooden structure") and the erection of pillars and wooden vehicular gates to the front boundary of the property to a height in excess of 1 metre.
- The requirements of the notice are:
 - (i) Remove the wooden structure and reinstate the front wall of the garage using materials to match the original **or**
 - (ii) Reduce the height of the wooden structure to a maximum height of 2.5 metres in height.
 - (iii) Remove the pillars and vehicular gates from the front boundary of the property **or**
 - (iv) Reduce the height of the pillars and wooden vehicular gates to the front boundary of the property to a maximum of 1 metre in height.
 - (v) Remove from the land all building materials and debris as a result of taking steps (i), or (ii) and (iii) or (iv).
- The period for compliance with the requirements is: 12 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (e) and (f) of the Town and Country Planning Act 1990 (as amended) ("the Act").

Summary of decision: The appeal is dismissed, and the enforcement notice is upheld with a correction and a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. Section 172(1)(b) of the Act empowers the Council, as Local Planning Authority, to issue a notice where it appears to them that there has been a breach of planning control and it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations. As established in *Britannia Assets*¹, I do not have jurisdiction to deal with submissions as to whether the Council acted outside their powers by issuing the notice, as may be pursued by way of judicial review.
2. Since no appeal has been brought on ground (a) I am not able to consider the planning merits of the development, including those associated with the development plan, or other material considerations such as those associated with the Human Rights Act and the Public Sector Equality Duty.
3. The appellant requested that the appeal be considered by means of written representations, but in his 'Further particulars' he stated he would like to be heard. Considering the criteria for determining the procedure for appeals, the grounds of appeal are clearly understood from the appeal documents and a site inspection, the

¹ *Britannia Assets v SSCLG & Medway Council* [2011] EWHC 1908 (Admin)

relevant issues are not complex and it is not necessary for the Inspector to test the evidence by questioning or to clarify matters, and the requirements of the notice are clear. The written procedure is therefore suitable.

The appeal on ground (e)

4. Appeals on ground (e) are made on the basis that copies of the Notice were not served as required by Section 172 of the Act.
5. Section 172(2) requires a copy of an enforcement notice to be served: (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
6. The Council advises the Notice was served on the appellant at the Land following a Land Registry search. The appellant clearly received the Notice, as evidenced by his appeal against it, and makes no case that it was not served on him in accordance with the statutory timeframe.
7. The onus is on the appellant to make his case, which is that the Annex to the Notice, which sets out the appellant's right to appeal, states the wrong address - one with which he has no legal interest.
8. With the information before me there is no evidence that any other owner or occupier, or any other person having an interest in the land who should have received a copy, did not receive it. And I have seen no evidence that the misdescription in the annex resulted in a failure to serve the Notice as required by Section 172 of the Act.
9. Even in the event that an appellant or any other person with an interest in the Land has not been served with the Notice, Section 176(5) of the Act empowers the Secretary of State to disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve them.
10. The annex to the Notice provides information alerting recipients of their right of appeal against it. It formed part of the Notice issued, and the appellant made his appeal against it in accordance with the timetable set out in the Annex. Read as a whole it is clear what the alleged breach of planning control is, and what recipients of the Notice are required to do. It is also clear that recipients of the Notice had a right of appeal, and I have seen no evidence that the appellant would have pursued his appeal differently if the Annex had referred to the correct address, or to no address.
11. The appellant was therefore served with a copy of the Notice, there is no evidence that any other relevant party has not been served with it, or that any relevant party was not served within the statutory timeframe for service. Neither has the appellant been substantially prejudiced by the misdescription in the Annex, which relates to his right of appeal.
12. No injustice would occur to the appellant were I to correct the Notice by removing the reference to "22 Gold Street, Northampton" in the Annex, and I shall do so in my formal decision.
13. For the reasons given above, the appeal on ground (e) fails.

The appeal on ground (c)

14. Appeals on ground (c) are made on the basis that, if they occurred, the matters stated in the Notice do not constitute a breach of planning control.
15. Neither party allege that the works carried out are not development for the purposes of the Act, that they are not development requiring planning permission, or that a Lawful Development Certificate has been granted for them.
16. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 grants planning permission for the classes of development described as 'permitted development' in Schedule 2. No planning application is required for such works, and those that meet all the requirements of the relevant part and class are deemed to be granted. The merits of such development are not for consideration, neither are the provisions of the development plan, and Section 38(6) of the Planning and Compulsory Purchase Act 2004 therefore does not apply.
17. In relation to the wooden structure, Schedule 2, Part 2, Class A deems the maintenance, improvement or other alteration of a building required for a purpose incidental to the enjoyment of the dwellinghouse to be 'permitted development' subject to conditions and limitations.
18. One of those limitations is that the height of the building, enclosure or container would exceed 4 metres in the case of a dual pitched roof, 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or 3 metres in any other case.
19. I am not persuaded by the appellant's argument that mutual agreement with a neighbour has the effect of moving the boundary for the purposes of the GPDO, even if that may be the case in relation to land ownership. The House of Lords held that some concepts of private law should not be introduced into the public law of planning control in *Reprotech*². Planning matters encompass the interests of multiple parties and the public generally, and are not limited to those of two private parties. Furthermore, the reasons for the Council taking enforcement action relate to scale, siting and design of the structure and its dominance and effects on the character and appearance of the host dwelling; these are public considerations, not those between two private parties.
20. Moreover, if the boundary has indeed been moved as the appellant suggests, then he has not advised where he considers it has moved to. The timber structure is very close to the boundary fence, and with the evidence before me I can see no reasonable prospect that the structure at the front elevation of the garage could be considered to be more than 2m from the boundary of the curtilage of the dwellinghouse.
21. Whatever the case in that respect, the appellant has not disputed the Council's statement that the structure is 3.3m in height, and there is no evidence before me of a dual pitched roof. The development is therefore not permitted on account of Schedule 2, Part 2, Class E.1.(e), having exceeded not only the maximum height of 2.5m within 2m of the boundary, but also the maximum 3m height in any other case. The wooden structure at the front elevation of the garage was therefore erected without planning permission, which constitutes a breach of planning control.

² R v E Sussex CC ex parte Reprotech (Pebsham) Ltd [2002] UKHL 8

22. In relation to the pillars and vehicular access gates at the front boundary of the property, Schedule 2, Part 2, Class A of the GPDO deems the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure to be 'permitted development' subject to conditions and limitations. Paragraph A.1.(a) excludes development where the resulting development adjacent to a highway used by vehicular traffic exceeds 1m in height.
23. The pillars and gates are located at the edge of the carriageway, immediately adjacent to the footway, which in front of the gates is designed as a vehicular crossover. There are no intervening features between the footway and the vehicular carriageway, and the development is clearly adjacent to a highway used by vehicular traffic.
24. I have not been provided with detailed heights of the various elements of the front boundary pillars and gates. The Council describe them as being of varying heights, all being in excess of 1m, which is not disputed by the appellant. I have seen no evidence that the pillars and gates replaced or modified existing boundary treatments of the same height, and the erection of the pillars and wooden vehicular gates are therefore not 'permitted development' under Schedule 2, Part 2, Class A of the GPDO.
25. The matters stated in the Notice therefore constitute breaches of planning control, and the appeal on ground (c) therefore fails.

The appeal on ground (f)

26. Appeals on ground (f) are made on the basis that the steps required by the Notice exceed what is necessary to remedy the breach of planning control, or as the case may be, remedy the injury to amenity.
27. The purpose of the Notice is to remedy the breach of planning control.
28. The requirements of the Notice are drafted with two alternatives. Requirements (i), (iii) and (v) would remove the development in its entirety, thereby remedying the breach of planning control. Requirements (ii), (iv) and (v) would require its alteration, such that it was 'permitted development' under Schedule 2, Part 2, Class A, and granted planning permission by Article 3(1) of the GPDO. In either case the breach of planning control would be remedied.
29. The appellant's case is that the harm alleged could be mitigated by landscaping, with particular reference to the wisteria planted and running along the wooden structure on the front elevation of the garage. But as no appeal has been made on ground (a), I am not able to consider the planning merits, or grant planning permission for the development, with or without conditions.
30. Whether or not planting would remedy the injury to amenity, it would not remedy the breach of planning control. It is therefore not an obvious alternative or 'lesser step' which would achieve the purposes of the Notice with less cost and disruption to the appellant.
31. However, criterion 5(i) requires not only the removal of the wooden structure, stated as being part of the breach of planning control specified in Section 3 of the Notice, but also the reinstatement of the front wall of the garage using materials to match the original. I have seen no evidence that the removal of the front wall of the garage formed part of the matters constituting the breach of planning control. Neither have I

seen any evidence that it is necessary to reinstate the front wall of the garage to remedy the breach of planning control. I shall therefore delete the words, “and reinstate the front wall of the garage using materials to match the original” from requirement 5(i) of the Notice.

32. The appeal on ground (f) therefore succeeds to that limited extent.

Conclusion

33. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and a variation.

Formal Decision

34. It is directed that the enforcement notice is corrected by the deletion of the words "relating to 22 Gold Street, Northampton" from the Annex.

35. And varied by the deletion of the words, “and reinstate the front wall of the garage using materials to match the original” from Requirement 5(i).

36. Subject to the correction and variation, the appeal is dismissed, and the enforcement notice is upheld.

Peter White

INSPECTOR