The Planning Inspectorate

Appeal Decision

Site visit made on 5 August 2014

by Sandra Prail MBA, LLB (Hons), former Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 September 2014

Appeal Ref : APP/W1715/C/13/2205671
Land at the rear of 7 Albert Road, Eastleigh, Hampshire, SO50 4JE.

- 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 Ken Flint against an enforcement notice issued by Eastleigh Borough Council.
- The notice was issued on 13 August 2013.
- The breach of planning control as alleged in the notice is without planning permission, the erection of fencing adjacent to the highway between the points marked A, B and C on the plan attached to the notice, the height of which exceeds 2 metres and comprises of panels, posts, trellis and tarpaulin.
- The requirements of the notice are to (i) remove all trellis and panels in excess of 2 metres in height, (ii) cut all posts to a maximum height of 2 metres from ground level, (iii) remove tarpaulin attached to panels and (iv) remove from the land all debris arising from compliance with requirements (i) (ii) and (iii) above.
- The period for compliance with the notice is 60 days.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld.

Ground (b) appeal.

1. In this ground of appeal the onus of proof rests upon the Appellant to show that the alleged breach of planning control has not occurred as a matter of fact.

2. The Appellant refers to a letter from the Council dated 5 September 2012 and his response. But this correspondence does not support the Appellant's case that the breach has not taken place as it recognises the existence of the fencing.

3. The Council provides photographs of the fencing attacked by the notice taken on 2 September 2012 and 6 January 2013 and I saw the fencing at my site visit.

4. Since the fencing exists as a matter of fact the ground (b) appeal must fail.

Ground (c) appeal.

5. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof rests upon the Appellant. A breach of planning control comprises the carrying out of

development without the required planning permission. The meaning of development is set out in Section 55 (1) of the 1990 Act and includes the carrying out of building, engineering, mining or other operations in, on, over or under land.

6. The Appellant's case is that the fencing is temporary to provide a safe, secure, clean, tidy and weatherproof working space to facilitate the completion of building works. Schedule 2 Part 4 Class A of the Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO) grants permitted development rights for the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land**.** However, by virtue of Article 1(2) of the GPDO, these provisions do not extend to the erection of a fence. In any event there is no evidence before me to support the assertion that the fencing is temporary and the photographs provided by the Council show that the fencing has been in place since at least September 2012. Further, there is no evidence before me of any lawful building works taking place. The Appellant has not therefore demonstrated that the fencing has the benefit of permitted development rights as a temporary building.

7. Schedule 2 Part 2 Class A of the GPDO grants permitted development rights for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure subject to certain conditions and limitations. Development is not permitted by Class A if (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed one metre above ground level; or (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed two metres above ground level. I saw on my site visit that the fencing marked A-B on the plan attached to the notice is adjacent to a highway. I do not have evidence before me as to the status of the roadway adjacent to the fencing marked B-C on the plan attached to the notice. But in any event it is not in dispute that the fencing exceeds both of the height tolerances in class A. Therefore it does not benefit from permitted development rights and constitutes development requiring planning permission. Consequently, the appeal on ground (c) fails.

Other matters

8. I note the representations before me, both for and against the development, which comment on the planning merits of the development. This appeal does not concern planning merits and therefore these issues are not relevant to the determination of this appeal.

9. The Appellant refers to other matters including the refusal of planning permission for a garage on the site, his health, alleged criticism of the Council's competency and examples of other development within and outside the Council's area. None of these matters relate to the appeal before me and therefore do not lead me to alter my conclusions.

Formal Decision

10. The appeal is dismissed and the enforcement notice is upheld.

S.Prail

Inspector