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## Appeal Decision

Site visit made on 30 August 2016

by V F Ammoun BSc DipTP MRTPI FRGS

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

Decision date: 3 October 2016

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**Appeal Ref: APP/V2255/C/15/3132013**

**Tickham Cottage, Tickham Lane, Lynsted, Sittingbourne, ME9 0HS**

- 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 Ms Angela Darling against an enforcement notice issued by Swale Borough Council.
  - The enforcement notice was issued on 19 July 2015.
  - The breach of planning control as alleged in the notice is *Without planning permission, the creation of a new entrance and the laying of gravel hard surfacing, the approximate positions of which are highlighted in blue and yellow on the plan which in the opinion of the Council would require the benefit of planning permission.*
  - The requirements of the notice are (i) *Remove the gravel material used to create the driveway from the Land, the approximate location and extent of which is highlighted in yellow on the plan;* (ii) *Remove the brick paviors in front of the gravel surfacing, the approximate location and extent of which is highlighted in blue on the plan;* (iii) *Restore the curtilage of the Property to the condition it was in prior to the creation of the new access and driveway.*
  - The period for compliance with the requirements is six months.
  - The appeal is proceeding on the grounds set out in sections 174(2) (a) (b) (c) (d) and (f) of the Town and Country Planning Act 1990 as amended.
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**Summary of Decision: The appeal succeeds and the notice is quashed, as set out in the Formal Decision**

### Preliminary matters

1. The allegations refers to *gravel hard surfacing* but it is clear from the reference to blue and yellow areas corresponding to gravel and *brick paviors* that the word "and" has been left out between "gravel" and "hard surfacing. As it is clear from the representations that both parties are in no doubt as to what was being referred to, no injustice would be done if I correct this drafting error.
2. The parties having agreed that everything necessary to my site decision could be seen from public land, I made an unaccompanied inspection.

### Main issues

3. The appeal is made in the alternative – firstly that the notice should be quashed on legal grounds [the appeals on (b), (c) and (d)], but that if these fail, then secondly that planning permission should be granted or the notice should have less onerous requirements [the appeals on grounds (a) and (f)]. I will therefore deal with the legal grounds first, and only if these fail will it be necessary to consider the grant of planning permission.

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4. As is well established legal grounds are to be decided on the facts and law involved, without consideration of planning merits. While considering these grounds, therefore, I can therefore only take into account the representations made against the development to the extent that they relate to the matters of fact and law at issue.

#### **The legal grounds of appeal**

5. It is not in dispute that there was previously a fence across a long extant gap in frontage hedging, that this fence has been removed and replaced by a gate that is used for access to the site, and that an area of hardstanding behind the fence has been replaced by gravel and hard surfacing. As a matter of fact, therefore, what is alleged in the notice has taken place. The arguments supporting ground (b) for the Appellant relate rather to the previous existence of an entrance at this point, a matter which falls to be considered under other legal grounds. **The appeal on ground (b) fails.**
6. An appeal on ground (d) turns on whether a development has been substantially completed long enough to be protected from enforcement action<sup>1</sup>, in this case the relevant period is four years. The appeal works were evidently substantially completed in 2012, so even if as suggested by the Appellant some works were done earlier, the four year immunity period at the time the enforcement notice was issued is not achieved. The Appellant refers to the fence that was replaced as temporary, but it was evidently of a wooden lattice form which I saw is still used to close off a further gap in the frontage hedge to the north west, and which did not appear to be of temporary construction. Nor is there any evidence to show that its presence was of such short duration as to call into question the reality of the earlier access having been closed. **The appeal on ground (d) fails.**
7. An appeal on ground (c) seeks to establish that what has been done had or did not require planning permission. The Appellant states that no more was done than reopen a pre-existing access, but does not refer to any planning legislation either to establish that this did not constitute development, or that it was within the category of "permitted development". The Council has referred to an absence of permitted development rights within the curtilage of a listed building<sup>2</sup>, which is relevant as Tickham Cottage is Grade II listed. The provision referred to removes permitted development rights to alter or erect fences, walls, gates and other means of enclosure. It follows that the formation of the present gate cannot have been permitted development.
8. The appeal development is not, however, limited to the new gate, nor indeed does the enforcement notice expressly refer to it in either allegation or requirements. There are two other matters involved – the formation of a hardstanding within the curtilage of a dwelling, and the formation of a means of access. Both of these matters are subject of permitted development rights, and though these are variously limited, being within the curtilage of a Listed Building is not one of these limitations. It followed that the Council's representations did not constitute, without further enquiry, sufficient support for their position. The Council was therefore invited to comment on whether and if so why it considered that these rights did not apply to the appeal

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<sup>1</sup> Section 171B of the Act relates.

<sup>2</sup> GPDO Schedule 2, Part 2, Class A at A1(d).

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development. The Council did not reply to this request within the period allowed, nor did it seek an extension of time in which to prepare a reply.

9. Turning to the terms of the permitted development rights relating to formation of accesses and of hardstandings<sup>3</sup>, in summary the former is allowable to serve other permitted development within a curtilage, and the hardstanding's provision for the parking of vehicles associated with the use of the house was such permitted development. As stated above there is no evidence from the Council as to why they should not benefit from these rights, nor is a reason self-evident. I have concluded that these aspects of the development did benefit from permitted development rights. I have considered whether the gate being without permission renders the other elements of the development unlawful, but as the various permitted development rights referred to are separate entitlements, have concluded that they should be dealt with on that basis.
10. I have also considered whether having regard to my findings on ground (c) it would be appropriate to amend the enforcement notice so that it did not relate to the making of an access and a hardstanding, but only to the new gate. This would, however, result in a completely different enforcement notice from that issued by the Council, and it cannot be assumed that the Council would have issued such a notice if it had appreciated that formation of the access and hardstanding did not constitute a breach of control. This approach is supported by that fact that it was the formation of an access and of a hardstanding that are referred to in the notice allegation, and that the gate was not mentioned<sup>4</sup>. In these circumstances I have concluded that the **partial success of the appeal on ground (c)** requires that the notice be quashed<sup>5</sup>.
11. In these circumstances the appeal on ground (f) and the appeal on ground (a) seeking planning permission are no longer before me for decision. The Appellant indicated concerns at how the decision to take enforcement action had been arrived at, but this matter was not pursued by either party later in the appeal process, and there is no evidence before me in this regard. I have taken into account all the other matters raised in the representations, including the removal of a coniferous hedge within the curtilage, but do not find that they alter or are necessary to my conclusions on this case.

#### FORMAL DECISION

12. The enforcement notice is corrected in paragraph 3 by adding the word "and" between the words "gravel" and "hard surfacing". Subject to this correction the appeal is allowed and the enforcement notice is quashed.

*V F Ammoun*

INSPECTOR

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<sup>3</sup> GPDO Schedule 2 at Part 1, Class F conditionally permits hard surfaces incidental to the enjoyment of a dwellinghouse, and the Schedule at Part 2, Class B conditionally permits the formation of a means of access to a highway.

<sup>4</sup> Though the requirements of the notice to *Restore the curtilage of the Property to the condition it was in prior to the creation of the new access and driveway* would have required the removal of the gate and reinstatement of the previous fence.

<sup>5</sup> It will be for the Council to consider whether having regard to the provisions of the development plan and other material considerations it is expedient to take enforcement action against the gate.