The Planning Inspectorate

Appeal Decision

Site visit made on 11 February 2016

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 11 March 2016

Appeal Ref: APP/V2255/C/15/3124762
Land adjoining slip road at Thanet Way off High Street Road, Hernhill, Faversham, Kent, ME13 9EN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by P & S Properties (South East) Ltd against an enforcement notice issued by Swale Borough Council.
- The Council's reference is JM/14/500654/OPDEV.
- The notice was issued on 3 June 2015.
- The breach of planning control as alleged in the notice is "Without planning permission the permanent stationing of a Snack Wagon with extended lean-to".
- The requirements of the notice are:
  i. Cease using the Land for the stationing of a Snack Wagon with extended lean-to;
  ii. Remove the Snack Wagon and extended lean-to from the land;
  iii. Remove any debris associated with complying with (ii) above from the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Application for costs

1. An application for costs was made by the appellant against Swale Borough Council. This application is the subject of a separate Decision.

The Notice

2. The alleged breach is described as a snack wagon with an extended lean-to (singular). From my observations from High Street Road it appears that there are a number of 'lean-tos' constructed from timber boards and plastic sheeting that are attached to a site container and a vehicle trailer which together make up what I take from a sign board to be the "Pit Stop Café". It seems there is no doubt as to what the notice is targeting but I am required to ensure that it is clear on its face and consider that some correction to the wording of the allegation and the consequent requirements is appropriate to achieve this end having regard to the powers conveyed to me by s176(1) of the 1990 Act. I consider that the development would be more accurately described as "Without planning permission the permanent stationing of a Snack Café and attached 'lean-tos' on the Land". The requirements should then be corrected to accord with these changes. I consider that these corrections would cause no injustice to the parties and would clarify more accurately the nature of the development.

Ground (f)

3. The argument put forward on this ground for the appellant on the appeal form is that a retrospective application could have been made to retain the existing café with associated 'lean-tos'. However not only has no such application been made, as far as I am aware, but also there is no ground (a) appeal or deemed planning application to consider under this appeal. The appellant had the opportunity of pursuing an appeal on this basis but has failed to do so. It is argued that an appeal could not be made on ground (a) as the alleged breach is not the same as the proposed application (15/505213/FULL) for the redevelopment of all the land targeted by the notice as a truckstop and transport café with car park. This is an erroneous claim as there was nothing to prevent the appellant pursuing a ground (a) appeal in respect of what presently exists. Consequently the merits or otherwise of the unauthorised development are not before me for consideration. The courts have made it clear that an appeal on ground (f) is not a 'backdoor' means of obtaining planning permission for a breach of planning control as ground (a) specifically exists in the legislation for this purpose.

4. The only question to answer under ground (f) is whether the steps required by the notice exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The agent says that the appellant has agreed to cease the use of the present café and it was not trading when I visited. He then asserts that a lesser step would be to allow the development to remain until such time as the application for the new café and truckstop has been determined.

5. I am not aware of the present situation with this application or whether it has been determined or is still outstanding. Nevertheless, this is a separate matter which does not mean that the requirements of the present notice are excessive. If permission has not or is not granted for this development it does not assist the appellant's case on ground (f) as there would be no permission for any café use on the land. If it is permitted then from the plans and documents before me it would lead to the demolition and replacement of the current café structure with a new purpose-built building. In these circumstances it is illogical to argue that requiring the removal of the present structure is excessive as it seems to be the intention of the appellant (who was also the named applicant for the redevelopment scheme (15/505213/FULL) given on the Planning and Access Statement).

6. Coming back to what presently exists it does not benefit from planning permission in any respect and the Council set out in their reasons for issuing the notice why they consider it causes injury to amenity and is contrary to development plan and national planning policy. In this context and in the absence of any alternative requirements which would address these objections I do not consider it is excessive to require both the use to cease and the existing café structure to be removed. Should planning permission be granted for 15/505213/FULL then the café use would be permitted on the basis of that comprehensive scheme and having regard to s180 of the Act the restriction on the use of the land for this purpose would cease to have effect in so far as it is inconsistent with that permission. For these reasons there is no success on ground (f).

Ground (g)

7. There seems to be a degree of overlap between the case made on ground (g) and ground (f) as once more the argument appears to be predicated on the Council determining application 15/505213/FULL. It is asserted that because of the delay in this happening and the absence of a decision – which the appellant would apparently appeal if refused – the compliance period should be extended from 3 months to preferably 12 months and as a minimum 6 months. This again is an attempt to retain what is unauthorised on the basis of a separate proposal which may or may not receive planning permission. I find this to be a flawed premise for the reason explained above that even if permission is granted it will be a new development and will replace what exists. It therefore provides no sound basis for extending the compliance period.

8. The actual point to consider is whether it is reasonable to expect compliance with the requirements within 3 months. In terms of the first requirement the agent says that the appellant has already agreed to cease the use and from my own observations this already appears to be the case so it is not in dispute. As far as the second and third requirements are concerned I consider that 3 months is a period of sufficient length to enable the structure to be dismantled and/or removed from the land along with any associated debris. Consequently there is no success on ground (g).

Conclusion

9. For the reasons given above I conclude that the appeal should not succeed on either of the grounds advanced. I shall uphold the enforcement notice with corrections as outlined in paragraph 2 above.

Formal Decision

10. The enforcement notice is corrected as follows:

    The wording in Paragraph 3 (THE BREACH OF PLANNING CONTROL ALLEGED) is deleted and replaced with the words "Without planning permission the permanent stationing of a Snack Café and attached 'lean-tos' on the Land"

    The wording of requirements (i) and (ii) in Paragraph 5 (WHAT YOU ARE REQUIRED TO DO) is deleted and replaced with:

    (i) Cease using the Land for the stationing of a Snack Café with attached 'lean-tos';

    (ii) Remove the Snack Café and attached 'lean-tos' from the land;

11. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

N P Freeman

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 11 February 2016

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 11 March 2016

Costs application in relation to Appeal Ref: APP/V2255/C/15/3124762 Land adjoining slip road at Thanet Way off High Street Road, Hernhill, Faversham, Kent, ME13 9EN

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by P & S Properties (South East) Ltd for a full award of costs against Swale Borough Council.
- The appeal was against an enforcement notice alleging without planning permission the permanent stationing of a Snack Wagon with extended lean-to.

Reasons

1. I have considered the application in the light of the advice contained in the Government's Planning Practice Guidance (PPG) on such matters. This advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

Submissions for the appellant

2. The Council first issued a notice which related to the wrong area of land to the north of Thanet Way. The appellant drew this to the Council's attention inviting them to withdraw the notice and not re-issue it as the appellant was intending to submit an application for the redevelopment of the land in question as a roadside café and lorry parking compound (Ref: 15/5052123/FULL). Despite this request the Council went ahead with serving a second notice in respect of the correct area of land which was then appealed.

3. Once the appeal was registered, the Council failed to submit the required questionnaire by the deadline date and did not send out the third party consultation letter until 5 October 2015. They also have not provided any written statement setting out their case. These procedural failings amount to unreasonable behaviour on the part of the local planning authority and have led to the appellant incurring unnecessary expense in having to pursue this appeal. If the Council had not served the second notice and dealt with the planning application instead there would have been no need for the appeal and the costs incurred could have been saved.

Response for the Council

4. None

Inspector's conclusions

5. It is evident that once the Council were made aware that the first enforcement notice was issued in respect of the wrong area of land they withdrew it before issuing the second notice in relation to the correct parcel of land. This indicates responsible behaviour on the part of the Council. As to the service of the second notice the Council were within their rights to proceed and they were not obliged to agree to the appellant's request not to do so pending a decision on the redevelopment application. These are two separate forms of development and the reasons given for issuing the notice explain why the Council considered it was expedient to do so. Consequently, their actions in this respect did not constitute unreasonable behaviour.

6. As to the procedural points regarding the supplying of the questionnaire and sending out of the consultation letter I accept that the Council were tardy in doing so and failed to meet the required deadlines. Nevertheless they eventually did so and the appellant has had the opportunity to comment and has not been prejudiced by the late submission. As to the lack of statement from the Council, whilst some further explanation would have assisted, they were not required to provide a statement.

7. Even if the actions of the Council were considered to contain some elements of unreasonable behaviour the other criterion to be met for an award of costs to be made is that the appellant has incurred unnecessary or wasted expense in pursuing this appeal. I do not consider that this is the case as the costs incurred are those that would have arisen even if the questionnaire and consultation letter had been sent on time. I have already addressed the point that it was not unreasonable for the Council to proceed to issue a second notice and the outcome of the application for the redevelopment of land is a separate matter which did not need to be resolved before the notice was issued.

8. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Government's Planning Practice Guidance (PPG), has not been demonstrated.

Decision

9. The application for an award of costs is refused.

N P Freeman

INSPECTOR