



Appeal Decisions

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: 17 March 2016

Appeal A: APP/V2255/C/15/3127953

11 Hustlings Drive, Eastchurch, Sheerness, Kent, ME12 4JX

- 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 Mr Michael Crossman against an enforcement notice issued by Swale Borough Council.
- The Council's reference is ENF/EAC/14/002.
- The notice was issued on 10 June 2015.
- The breach of planning control as alleged in the notice is "Without planning permission the construction in red brick, topped with white coping stones, of small retaining walls, and retaining walls used to create two planting areas within the front garden of the site, the heights of which range from 180mm to 780mm the approximate positions of which are highlighted in yellow on the plan".
- The requirements of the notice are:
 - i. Demolish and remove the retaining walls highlighted in yellow on the plan;
 - ii. Demolish and remove the retaining walls used to create the two new planting areas highlighted in yellow on the plan;
 - iii. Remove any materials or debris etc from the Land caused in complying with the requirements of Sub paragraph 5.(i) and (ii) above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: APP/V2255/W/15/3062096

11 Hustlings Drive, Eastchurch, Sheerness, Kent, ME12 4JX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Michael Crossman against the decision of Swale Borough Council.
- The application Ref. 14/503145/FULL, dated 27 September 2014, was refused by notice dated 28 May 2015.
- The development proposed is small retaining walls for brick planters to front garden - two areas.

Summary of Decision: The appeal is allowed, and planning permission granted.

Appeal Decisions: APP/V2255/C/15/3127953 & APP/V2255/W/15/3062096

Applications for costs

1. Applications for costs were made by appellant against the Council in respect of both appeals. These applications are the subject of a separate Decision.

Main Issue

2. Although there are two separate appeals they essentially relate to the same matter. That is whether planning permission should be granted for the development that has taken place. The main issue to consider is the impact of the development on the character and appearance of this residential area and the streetscene.

Reasons

3. The development comprises low retaining walls some of which provide planters which contain a range of vegetation and others which enclose some steps up to the front of the property. The walls are constructed in red brick, which is the predominant facing material used in the facades of the houses which comprise the Kingsborough Manor Estate, topped with stone copings. One of the planter sides facing the road has what I take to be the name of the property ("Chayleigh") etched into a piece of stone.
4. I note the objections of some residents and the Council that the development at the front of the property is incongruous and out of keeping. In this respect I am also aware that the planning officer who dealt with the application took a different view finding that "The proposal would not result in harm to residential amenity because it is small scale and would not enclose neighbouring properties to any significant degree". The recommendation was to grant planning permission but the Planning Committee members took a different view and refused the planning application for the reasons given in the decision.
5. For my part I am in agreement with the original views of the planning officer. The walls and copings are attractively designed in materials which complement the housing round about. Although at the front of the property they are relatively low features which I do not find to be intrusive in the street scene. The vegetation that has been introduced into the planters provides verdure which softens the impact of the masonry and overall the development is not out of keeping or detrimental to the character or appearance of this modern housing estate.
6. In reaching this view I observed that there are places nearby where fences and walls abut the pavement edge and these are around 2m high which is considerably higher than the walls in question. I accept that most of the front gardens are open but nevertheless a number contain garden ornaments, seats and other features, including a sizeable boat in the front garden of the property close to the junction with Eastchurch Road. There are also substantial areas of planting in the front gardens. In this context I do not consider that the sensitively designed low planters and walls are out of place or that they cause any material harm to the openness of the estate.
7. I have take account of the comments from objectors which I have borne in mind. The points regarding restrictive covenants are not matters before me or material planning considerations but those which are subject to separate legislation, should such covenants exist and have effect.

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8. I have had regard to the policy context, in particular Policies E1 and E19 of the Swale Borough Local Plan 2008 to which the Council refer. There is some criticism from the appellant's agent concerning the age of these policies but as far as I am aware they remain as 'saved' policies pending the production of a new Local Plan. Moreover, for the reasons given above I consider that there is no conflict with the terms of these policies or indeed any aspect of the National Planning Policy Framework.
9. In conclusion I find that the development has not had a harmful impact on the character and appearance of this residential area or the streetscene. Consequently the appeals succeed on ground (a) and in terms of the s78 appeal and planning permission will be granted. The Council have not requested any conditions and I consider that none are necessary.

Formal Decisions:

Appeal A: APP/V2255/C/15/3127953

10. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction in red brick, topped with white coping stones, of small retaining walls, and retaining walls used to create two planting areas within the front garden, the heights of which range from 180mm to 780mm, on land at 11 Hustlings Drive, Eastchurch, Sheerness, Kent, ME12 4JX.

Appeal B: APP/V2255/W/15/3062096

11. The appeal is allowed and planning permission is granted for small retaining walls for brick planters to front garden - two areas - at 11 Hustlings Drive, Eastchurch, Sheerness, Kent, ME12 4JX in accordance with the terms of the application, Ref. 14/503145/FULL, dated 27 September 2014, and the plans submitted therewith.

N P Freeman

INSPECTOR



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: 17 March 2016

Costs applications in relation to Appeal Refs: APP/V2255/C/15/3127953 & APP/V2255/W/15/3062096

11 Hustlings Drive, Eastchurch, Kent, ME12 4JX

- The applications are made under the Town and Country Planning Act 1990, sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Mr Michael Crossman for a full award of costs against Swale Borough Council in respect of the two appeals.
 - The appeals were against an enforcement notice alleging the construction of retaining walls in the front garden and the refusal of planning permission for the same.
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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 should have delayed the issuing of an enforcement notice pending the outcome of the appeal relating to the refusal of planning permission. It was neither proportionate nor expedient to take enforcement action as permission may have been granted. To do so was contrary to the advice in paragraph 207 of the National Planning Policy Framework (NPPF) and put the appellant to extra expense over and above that incurred in pursuing the s78 appeal, which could have been avoided. The Council's argument that there was no need to appeal the enforcement notice is flawed as this was necessary to avoid the notice taking effect prior to the planning appeal being determined. Based on earlier submissions to the Council to this effect they were given the opportunity to withdraw the notice but failed to do so.
3. In terms of the decision of the Council to refuse planning permission they were entitled to do so, notwithstanding the recommendation of their officers to grant planning permission. However in doing so they are required to produce convincing and substantive reasons to show why they departed from their professional advisers' recommendation. They did not do so and the minutes of the Committee meeting only contain bland generalisations rather than substantive reasons for finding the development to be unacceptable. Hence they failed to properly discharge their responsibility in reaching their decision.

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Response for the Council

4. The Council acted reasonably in issuing the enforcement notice following the refusal of planning permission and the submission of the planning appeal was not a sound reason for delay. The expectation of members is that enforcement action will be taken in good time. The enforcement appeal simply duplicates the s78 appeal and no other grounds under s174 are advanced. It was therefore unnecessary to lodge the enforcement appeal as the matters in question were the same with no new issues for consideration. Moreover if planning permission is granted the effect of the notice would be nullified. On the planning appeal the reasons why the Council decided to refuse the application despite the recommendation of officers is set out in the decision notice and expanded upon in the Council's statement on both appeals.

Inspector's reasoning

5. In terms of the issuing of the enforcement notice I have had regard to the advice in paragraph 207 of the NPPF. I consider that the appellant's agent is putting gloss on what it actually says. The first point is that effective enforcement action is important if public confidence in the planning system is to be maintained. So once the Council had decided to refuse planning permission they were not required to delay enforcement action until the s78 appeal was determined. Discretion and proportionality need to be followed but in this instance I find that taking enforcement action was not disproportionate as it has enabled the two appeals to be linked and determined at the same time. As the Council point out no additional issues are raised by the s174 appeal as it is only pursued on ground (a). Delaying the service of the notice could have resulted in another later appeal which would simply have dragged out the proceedings which I consider would not help in developing public confidence in the planning system.
6. Based on my decision on the s78 appeal, permission is granted for the development and, having regard to the powers conveyed by s180 of the Act the enforcement notice would have ceased to have effect in so far as it is inconsistent with the planning permission now granted even if no s174 appeal had been lodged. So it was not strictly necessary to pursue the enforcement appeal as no other grounds other than (a) were argued. For this reason the agent's argument about needing to appeal to avoid the notice taking effect is misguided.
7. On the matter of the planning appeal, I appreciate that the reporting officer argued in favour of granting permission for the application. Nevertheless, this is not an instance where the Council have failed to substantiate the reasons for their decision. Whilst I have not agreed with their reasoning I consider that some reasonable explanation was provided in their written statement sufficient to discharge their responsibilities. I therefore find that unreasonable behaviour resulting in unnecessary expense has not been demonstrated.

Decision

8. The applications for awards of costs in respect of both appeals are refused.

N P Freeman

INSPECTOR