
Appeal Decisions

Site visit made on 26 October 2016

by Janine Townsley LLB (Hons) Solicitor (Non-practising)

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

Decision date: 2 December 2016

Appeal A Ref: APP/P3040/C/16/3151017

5 Hatfield Drive, West Bridgford, Nottingham, NG2 7SG.

- 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 Sunny Anand against an enforcement notice issued by Rushcliffe Borough Council.
 - The Council's reference is 16/00496/FUL.
 - The notice was issued on 6 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission, erection of a fence over 1 metre high between the points marked A and B on Plan 2 attached.
 - The requirements of the notice are to remove the fence erected on the land in the position shown by means of a red line between the points marked A and B on plan 2 attached from the land.
 - The period for compliance with the requirements is three 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.
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Appeal B Ref: APP/P3040/W/16/3151015

5 Hatfield Drive, West Bridgford, Nottingham, NG2 7SG.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Sunny Anand against the decision of Rushcliffe Borough Council.
 - The application Ref 16/00496/FUL, dated 23 February 2016, was refused by notice dated 20 April 2016.
 - The development proposed is provide a two storey side extension and retain boundary fence adjacent to Compton Acres.
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Decisions

Appeal A: APP/P3040/C/16/3151017

1. 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 erection of a fence over 1 metre high between the points marked A and B on plan 2 attached on land at 5 Hatfield Drive, West Bridgford, Nottingham, NG2 7SG referred to in the notice, subject to the following condition:

- 1) The development hereby permitted shall be retained in accordance with the following approved document: View of fence from Compton Acres.
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Appeal B: APP/P3040/W/16/3151015

2. The appeal is allowed and planning permission is granted for a two storey side extension and retention of a boundary fence adjacent to Compton Acres at 5 Hatfield Drive, West Bridgford, Nottingham, NG2 7SG in accordance with the terms of the application, Ref 16/00496/FUL, dated 23 February 2016, and the plans submitted with it, subject to the following conditions.
 - 1) The development hereby permitted shall be completed in accordance with the following plans and documents: Drawings 160216/1, 160216/2, 160216/3, 160216/4, 160216/5, 160216/6, view of fence from Compton Acres.
 - 2) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

Procedural Matters

3. This decision relates to two separate appeals. Appeal A, the enforcement appeal (APP/P3040/W/16/3151015) and Appeal B, (APP/P3040/C/16/3151017) the appeal against the refusal to grant planning permission.
4. Appeal B relates to an application for planning permission for a two storey side extension and retention of a boundary fence, however, the Council's decision notice does not refer to the extension and there is nothing in the Council's evidence to suggest any objection to this element of the scheme. From the evidence before me I consider there is no reason to doubt that the extension would comply with local and national policy and I infer that it is common ground between the parties that the extension would be acceptable. I have determined the appeal accordingly.
5. I am satisfied that the fence referred to in both appeals is one and the same. Accordingly, the main issue and evidence for both appeals are identical, and focus exclusively on the fence referred to. For this reason the main issue and reasons set out below should be read as applying to both appeals.

Main Issues

6. This is the effect of the fence on the character and appearance of the area.

Reasons

7. The appeal site comprises a detached dwelling and garden within a largely residential area. Whilst the dwelling is located at the head of a cul de sac known as Hatfield Drive, the boundary fence to which this appeal relates is located to the side and rear of the dwelling. For this reason, the principal views of the fence are obtained from Compton Acres, a highway which runs to the rear of the appeal dwelling.
8. From the evidence and my own observations, Compton Acres is a relatively busy road faced principally by the side and rear amenity spaces of dwellings.

9. The Council's position is that the 1.8 metre fence serves to enclose an area which formerly contributed positively to the area by providing an open green space.
10. The Council acknowledges that this space was limited, and from photographs submitted it appears that the area resembled a grass verge between the footway of Compton Acres and the previous lower rear boundary wall of the appeal property and garage. The amenity value of this area would have been limited and the presence of the previous albeit lower boundary wall and the flank elevations of the houses and garages beyond mean that the impact of the appeal fence on openness is limited. The construction of the two storey side extension, the non-contentious element of the development, would further limit any visual sense of space at this location. Similarly, whilst there would have been some green area previously present in the form of the grass verge, the restricted area of which means that the harm caused by the fence is negligible. This factor, taken in conjunction with the other examples of similar fencing in the area reduces the harmful impact of the fence.
11. In relation to the loss views of the grass verge, whilst there are some examples of more open grass verged areas these are generally at corner locations in proximity to junctions and can therefore be contrasted with the appeal site. Within the immediate area there are other examples of similarly designed fencing of similar height. This is a factor to which I attach considerable weight. Some of these examples are set back lightly from the footway but by such a small distance that little positive gained from them. Overall, the various other examples of brick wall built to a similar height and other fencing with concrete posts all build immediately adjacent to or very close to the footway means that the development does not have a harmful effect. Accordingly, there is no conflict with criterion 1 of policy 10 of the Rushcliffe Local Plan Part 1: Core Strategy (2014) which requires that all new development will be designed to make a positive contribution to the public realm and sense of place.
12. I have also been referred to policy GP2 of the Rushcliffe Borough Council Non-Statutory Replacement Local Plan, however this is a non-statutory plan and as such does not form part of the development plan for the area. Policy GP2 makes reference to new residential development, extensions and conversions and therefore does not appear to have any particular relevance to fences. Accordingly I have attributed limited weight to this guidance.
13. I note also the appellant's evidence that the fence affords a greater degree of security. Whilst this is not determinative in itself, it is a factor which weighs further in favour of the proposal.

Conditions

14. The development has already commenced, therefore, there is no need to include any commencement conditions, however I have added a condition that the development should be completed in accordance with listed plans since the extension element has not commenced. I have also added a condition requiring use of appropriate finishing materials for the extension in the interests of preserving the character and appearance of the area.

Decision

Appeals A and B

15. For the aforementioned reasons, and taking into account all matters raised, I consider the appeals should be allowed as set out in my formal decisions as set out above.

Janine Townsley

Inspector