
Appeal Decision

Site visit made on 13 December 2016

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 29 December 2016

Appeal Ref: APP/M4510/C/16/3151256

24 Glastonbury Grove, Newcastle upon Tyne, NE2 2HB

- 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 David Broadhead against an enforcement notice issued by Newcastle upon Tyne City Council.
 - The enforcement notice was issued on 3 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a fence on top of an existing wall consisting of vertical close-boarded cladding measuring between 1.25m and 1.32m in height and 25.75 metres wide on top of an existing stone wall.
 - The requirement of the notice is to remove all of the vertical close-boarded cladding from the top of the stone wall along Jesmond Dene frontage.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

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

Reasons: ground (c)

2. The eastern boundary of the garden of no.24 Glastonbury Grove fronts onto Jesmond Dene Road and is defined by a long-established stone wall along its full width of some 25.75m. Around 1990 a new fence was fixed to the top of the wall. This was formed by vertical metal brackets bolted to the wall at c.1.8m centres, to which 2 horizontal rows of timber battens were bolted on the outer (eastern) side. A plastic coated horticultural wire mesh was fixed to the outer side of the battens. In 2009, feather edged timber boarding was fixed to the inner side of the battens of the central 4 bays (a total width of some 7.2m). This boarding projected above the height of the original fence. In 2013, the wire mesh was relocated to the inner side of the battens and new, vertical timber boarding was fixed to the outer side of the battens; this, too, exceeded the height of the original fence. In 2016, the new timber boarding was modified, by reducing its height. The notice seeks the removal of this boarding, as now modified.
3. The appellant has not claimed that the building operations do not fall within the definition of development, as defined in S.55 of the 1990 Act. His case is that the operations are permitted development, pursuant to Part 2 to Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO), under Minor Operations, Class A. This permits the

- erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, subject to a number of limitations.
4. It is common ground that the fence in question fulfils the role of a means of enclosure of the appeal property on its eastern boundary with Jesmond Dene Road. The appellant's submission that this is no longer a highway used by vehicular traffic seems to me immaterial in that the combined height of the fence, and the stone wall to which it is affixed, exceeds 2m. On that basis it would fall foul of A.1.(b).
 5. The appellant relies on A.1.(c):- "*the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; ..*" It is agreed that the fence does not now exceed its former height. To my mind, the works carried out clearly amount to more than mere maintenance. Therefore, the issue to be determined is whether the works amount to improvement or alteration of the fence or whether they should be regarded as new development for which planning permission is required.
 6. I understand that the original metal brackets have remained in situ at all material times, as have the 2 rows of horizontal timber battens. The removal of the original plastic coated horticultural wire mesh from the outer elevation of the battens and its reattachment to the inner elevation appears to me to be appropriately viewed as an alteration to the existing fence; it is in any event not attacked by the notice.
 7. The appellant claims that the 2009 installation of timber fencing to the 4 central bays achieved lawfulness by July 2013, when it was removed. This matter was given some weight in Counsel's opinion submitted on behalf of the appellant's case. However, I have seen no evidence as to exactly when in 2009 this installation took place. Therefore I am unable to conclude that it had been in place for 4 years, and was thereby exempt from enforcement action, by July 2013 when it was removed. Accordingly, the existence of the 2009 timber fencing can have no bearing on my decision.
 8. Reference has been made by the parties to the cases of *Hewlett v SSE [1983] JPL 105* and, in turn, to *Sainty v MHLG [1964] 15 P&CR 432* for guidance as to whether development amounts to re-building, maintenance, improvement or alteration. In *Hewlett*, a house entirely rebuilt in stages was held to be a new building. In *Sainty*, the demolition of 2 cottages and their replacement with 2 houses of different design, and on slightly different foundations, was held not to be an alteration or improvement. However, in the latter case, Parker LCJ accepted that to take down the wall of an old cottage, put in a damp course and re-erect the wall would be an improvement or alteration.
 9. In the present case, I accept that the fence has not been entirely re-built. I note in para. 6 above those parts of the structure that remained throughout. However, the works carried out do not appear to be analogous to those in the example cited by Parker LCJ above, which would, in essence, have resulted in the reinstatement of the original wall.
 10. From a variety of dictionary sources, the ordinary meaning of "alter" is generally accepted to be to modify or change the character or composition, usually slightly, and of "improve" to make something better. Both of these

definitions are argued to be applicable to the works in question. The fence was altered by the relocation of the wire mesh. To my mind, the new timber boarding amounts to a far more extensive operation than could reasonably fall within either of the above two definitions. In effect, the boarding has resulted in a second skin of fencing, of far greater physical substance, of very noticeably different appearance and with a small but significantly greater depth.

11. Although the recent case of *Hibbitt and another v SSCLG & Rushcliffe BC* [2016] EWHC 2853 (Admin) concerned the refusal of prior approval for the conversion of an agricultural building to a dwelling, it appears to have certain parallels to this case. There, Green J. stated "*There will be numerous instances where the starting point (the "agricultural building") might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality what is being undertaken is a rebuild.*" I view the original wire mesh fence in the present case as similarly skeletal, such that the new fence was in all practical terms starting afresh with only a modest amount of help from the original fence.
12. Although each case must be decided on its specific merits, my conclusion appears consistent with that of my colleague in the Trafford appeal concerning whether works undertaken to a fence required planning permission, which was referred to by the Council (Ref: APP/Q4245/C/12/2168071).
13. As a matter of fact and degree, I am drawn to the conclusion that the works carried out to form the present timber boarded fence amounted to new development which did not benefit from the provisions of Class A, Part 2 of Schedule 2 to the GPDO. It therefore required planning permission and the appeal on ground (c) fails.

Other matters

14. The appellant has referred to procedural irregularities on the part of the Council. However, none of these appear to me to be so fundamental as to affect the validity of the enforcement notice or to unduly prejudice the appellant's position.
15. The appellant has also introduced in effect a ground (f) appeal in seeking the variation of the requirements of the notice to allow the timber boarding in the central 4 bays to be retained. However, as indicated in para.6 above, I have no evidence to demonstrate the lawfulness of the 2009 timber boarding, upon which this request is based.

B.S. Rogers

Inspector