
Appeal Decision

Site visit made on 14 December 2016

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 04 January 2017

Appeal Ref: APP/Y2003/C/16/3154990

Land at 45 Cross Street, Crowle, North Lincolnshire DN17 4LH

- 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 Mrs Lisa Tidmas against an enforcement notice issued by North Lincolnshire Council.
 - The notice was issued on 21 June 2016.
 - The breach of planning control as alleged in the notice is: without planning permission the unauthorised erection of fencing to the front of property in excess of 1 metre adjacent the highway.
 - The requirement of the notice is to remove the fence in its entirety.
 - The period for compliance with the requirement is within two (2) months beginning with the date this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Procedural Matter

2. The erection of a gate, fence, wall or other means of enclosure is permitted development under Class A, Part 2, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, development is not permitted by Class A if: "(a) the height of any gate, fence, wall or other means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed one metre above ground level."
 3. There is no definition of 'adjacent' but in past Orders where the word 'abutting' was used, it has been established that 'abutting' equated to 'touching'. The Oxford English Dictionary defines 'adjacent' as 'lying near' or 'adjoining'.
 4. The position of the fencing is not marked on the plan attached to the notice. I saw that it runs along the edge of the boundary with the footway. That part of the highway used by vehicles, the carriageway, is separated from the fencing by the 1m or so wide footway. Even so, I am satisfied that this fencing is close enough to the highway to be 'adjacent' for the purposes of the GPDO.
 5. To the east of the ungated driveway entrance is a brick pier about 1m or so in height behind which fencing runs back along the boundary with No 43. Similar fencing divides the boundary with No 47 but is joined to the section that is
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parallel with the footway. These side fences do not mark a boundary between the site and the highway. To include them as 'adjacent' to the highway could result in fencing at a considerable distance from the highway being limited to 1m high.

6. This does not always mean that boundaries are excluded that do not meet the highway at some point: whether a boundary is adjacent to the highway is a matter of fact and degree in each case. However I take into account that the Council has not delineated any part of the fencing on the plan attached to the notice. In all, I am satisfied that the side fencing is not adjacent to the highway and is not therefore subject to the enforcement notice.

Ground (f) – whether the requirement of the notice is excessive

7. Section 173 of the Act states that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first purpose may be to remedy the breach of planning control which has occurred. The second may be to remedy any injury to amenity which has been caused by the breach. An appeal on ground (f) is limited by the Council's purpose in issuing the notice.
8. It can be seen from the notice that a complete remedy is sought to the breach of planning control, namely the entire removal of the fence. The appellant says that the notice should require a lesser step of "*reducing the fence height down to 1 metre in height, 2 metres to the right and left*". There is no explanation of this alternative which is difficult to reconcile with what exists on site, even assuming the appellant considers the scope of the notice to be wider than it is.
9. That said, the fencing adjacent to the highway exceeds 2m in length. Therefore on any reasonable construction of the alternative step, part of that fencing would still exceed 1m in height. It is argued that the alternative would resolve the Council's concerns as to pedestrian visibility but where no appeal is made under ground (a) and consequently there is no deemed application for planning permission, the Act cannot be interpreted as allowing arguments made under ground (f) about the planning merits of the development.
10. I cannot therefore take into account under a ground (f) appeal the planning merits of retaining the fence at a greater height than would be permitted to exist under the GPDO. However if the existing fence is removed entirely, there is no legal or other reason to suppose that it will not immediately be replaced with a fence of the same or similar design but at a height within permitted development limits. Therefore to require its complete removal would be excessive.
11. I consider that the requirements of the notice in this case exceed what is necessary to remedy the breach. I shall vary the notice to require a reduction in height to no more than 1m. I will also make minor amendments to the wording of the notice in the interests of clarity and enforceability. The appeal on this ground therefore succeeds to this extent only.

Overall Conclusion

12. For the reasons given above I conclude that the requirements are excessive and I am correcting and varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

Formal Decision

13. The appeal is allowed on ground (f). It is directed that the enforcement notice be corrected as follows:

- In the description of the breach of planning control insert "the" before "property"; insert "in height" after "metre" and insert "to" before "the highway".

14. It is further directed that the requirement of the notice be varied as follows:

- Delete "remove the fence in its entirety" and substitute "reduce the height of the fence to a maximum of 1 metre above ground level."

15. Subject to these variations the enforcement notice is upheld.

Grahame Kean

INSPECTOR