The Planning Inspectorate

Appeal Decision

Site visit made on 5 December 2016

by Thomas Shields MA DipURP MRTPI

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

Decision date: 5 January 2017

Appeal Ref: APP/D0650/C/16/3157857
117 Birchfield Road, Widnes, WA8 7TG

- 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 T Wakefield against an enforcement notice issued by Halton Borough Council.
- The notice was issued on 5 August 2016.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the land by subdividing it from the property and creating a new planning unit.
- The requirements of the notice are:
  (i) Cease the change of use of the land as set out at section 3 of this notice;
  (ii) Reinstate the land to the domestic curtilage of the property.
- The period for compliance with the requirements is 14 days.
- The appeal is proceeding on grounds set out in section 174 (c) of the Town and Country Planning Act 1990 as amended (the Act).

Decision

1. The appeal is allowed and the enforcement notice is quashed.

The appeal site and background

2. 117 Birchfield Road is mature and extended semi-detached dwellinghouse with a short front garden, driveway access to the side and longer rear garden.

3. The appellant has previously attempted to gain planning permission for a separate detached dwelling in the rear garden reached from the main highway by the side access driveway. It would have left No. 117 with a smaller rear garden and narrower front garden/forecourt. No planning permission for a separate dwelling has been granted by the Council, and an appeal[1] against the Council's refusal of planning permission for the last application for the same was dismissed on 30 September 2016.

4. At the time of my visit to the appeal site I saw that the land at the side and front of the property had been resurfaced and that close boarded fencing had been erected on the property, as shown in the photographs and plan attached to the Council's enforcement notice.

[1] (APP/D0650/W/16/3153306)

The appeal on ground (c)

5. The ground of appeal is that the matter alleged in the notice, if it has occurred, does not constitute a breach of planning control.

6. In this regard it is important to note that the enforcement notice alleges a material change of use without planning permission by subdividing the land (outlined in red) from the remainder of the property and creating a new planning unit. In light of that it seems to me that the argument made by the appellant in the letter[2] submitted to the Inspectorate in support of the appeal is one relating to ground (b); that the breach of planning control alleged has not occurred as a matter of fact.

7. However, taking the parties' positions together, there is no dispute that fencing has been erected on the site as I have previously described. The main issue in the appeal therefore turns on whether the erection of that fencing, together with any other factors, has resulted in a material change of use by creating a new planning unit.

8. From the detailed reasons in the enforcement notice it is clear to me that the Council considers that the lawful planning unit at No. 117 comprises the house itself together with all of the attached land between it and the highway to the front; to the rear boundary some 30 metres to the rear of the house, and between the dividing side boundaries with adjacent properties at Nos. 115 and 119. From my inspection of the site and its surroundings, from the information before me, and with no other evidence to the contrary, I reach the same conclusion. That is not disputed by the appellant. Indeed it is the appellant's case that nothing has changed in terms of land use.

9. The fencing includes a pedestrian gate at the rear of the house and a gap to the front section, such that all of the land (outlined in red and blue on the notice) is accessible by occupiers of No. 117. The appellant states that the garden has been separated in this manner to provide a section of more manageable garden for the disabled tenant, but that all of the land remains as residential garden space under a single Title. The tenant corroborates that in his letter submitted with the appeal stating that he full access to all of the land at No. 117 although he is not responsible for maintenance of the land subject of the notice.

10. Schedule 2, Part 2 of the Town and Country Planning (General Permitted Development) Order 2015 is concerned with minor operations. Class A of Part 2 grants planning permission for "the erection, construction … of a gate, fence, wall or other means of enclosure" if less than 2 metres in height, and does so without reference to the use or extent of the land involved. Hence, provided that the fencing does not form an integral part of unauthorised development (such as an unauthorised material change of use) then it is likely to be permitted development. That does not mean that following the erection of the fencing/enclosure the appellant is entitled to make a material change in the use of the land, but the act of its erection, by itself, does not bring that about.

11. Given the history of refused planning applications and the appeal referred to in section 4 of the notice, it is understandable that the Council may have been

[2] Appellant's letter dated 01.09.2016

influenced to act quickly in order to prevent what they suspected was a breach of planning control. However, an enforcement notice cannot be issued prospectively. In this regard there is no convincing evidence presented, or any factors that I saw during my visit to the appeal site, that diminishes the appellant's case that there has not been a material change of use.

12. Having regard to all of the evidence before me, I conclude on the balance of probability that the breach alleged has not occurred (ground b) and hence there has not been a breach of planning control (ground c).

13. The appeal on ground (c) therefore succeeds and I have quashed the notice accordingly.

Thomas Shields

INSPECTOR