

Appeal Decision

Site visit made on 5 December 2016

by T Shields DipURP MA MRTPI

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

Decision date: 5 January 2017

Appeal Ref: APP/P2365/X/16/3157927

20 Parsonage Brow, Upholland, Skelmersdale, WN8 0JG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Garry Lawton against the decision of West Lancashire Borough Council.
 - The application Ref 2016/0448/LDP, dated 13 May 2016, was refused by notice dated 28 July 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is the proposed extension to existing boundary fencing.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Following the Council's refusal of the application the appellant revised the scheme during the appeal process by submitting a revised plan and details. It differs from the refused application only in that the position of the proposed fence line has been moved further towards the appellant's house so that it would be no nearer than 2 metres from the kerb edge of the highway where it meets the green verge. This is a relatively minor modification to the refused scheme and the Council have been able to review and comment upon it in their appeal statement. Given these circumstances I am satisfied that determination of the appeal including the revised scheme would not prejudice the Council's case. I have therefore done so.
3. For the avoidance of doubt, I should explain that matters such as planning policies, the finished appearance of the proposed fencing, and its impact on the visual amenity of the surrounding area are not relevant in this appeal, and they are not therefore issues for me to consider. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Main Issue

4. The proposed fence would be constructed to the eastern side of the appellant's house comprised of wooden slats and brick piers ranging between 1.7 and 1.9 metres in height. It would be 'development' within the meaning of section 55 of the Act and as such requires planning permission.
-

5. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded. This turns on the single point of dispute between the Appellant and the Council. That is whether the proposed fence benefits from the planning permission for gates, fences and walls granted by Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 ("the Order").

Reasons

6. Class A of the Order grants planning permission as follows:

The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

7. But development is not permitted by Class A if -

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed -

(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;

(ii) in any other case, 1 metre above ground level;

8. For the purposes of the Order it is important to establish the extent of the highway. The Council have supplied undisputed evidence¹ showing its extent and I have no reason to doubt its accuracy. Therefore the key consideration in relation to both the refused and revised schemes and A1(a)(ii) above relates to whether the fence would be constructed adjacent to the highway
9. As originally submitted to and determined by the Council the proposed fencing would have been approximately between 0.8 and 0.6 metres from the kerb edge. It would undoubtedly have fallen within the adopted highway and so would be adjacent to it, therefore it would not have benefitted from the permission granted by the Order.
10. The revised scheme would run along a line which would be just outside the edge of the adopted highway. However, a fence/wall does not have to touch the edge of a highway to be considered adjacent, such that there may be some distance between a highway edge and a fence/wall serving a property, yet it may still be close enough to have the perceived function of forming a highway boundary. Whether a fence/wall would be adjacent in such circumstances is a matter of fact and degree in each case.
11. Although the fence subject of the revised scheme would be set back from the highway kerb by 2 metres it would nonetheless be very close to the back edge of the adopted highway. In my view it would be clearly seen and perceived from all directions as a boundary treatment separating the highway from the appellant's garden. As such I consider it would be adjacent to the highway. Since it would exceed 1 metre in height it would not therefore benefit from the planning permission granted by the Order.

¹ Council's Appendix V page 3

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of the proposed extension to existing boundary fencing at 20 Parsonage Brow, Upholland, Skelmersdale, was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Thomas Shields

INSPECTOR