

Appeal Decisions

Site visit made on 9 January 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 16 January 2017

Appeal A: APP/Z4718/C/16/3159837

Appeal B: APP/Z4718/C/16/3159838

1 Northfield Road, Dewsbury, WF13 2JX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
 - The appeal is made by Mr Mohsin Daji (Pharmacist2u Ltd) (Appeal A) and Mrs Shereen Daji (Appeal B) against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 26 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a fence exceeding 1 metre in height adjacent to a highway (shown blue on the attached plan).
 - The requirement of the notice is:
Reduce the height of the fence (shown blue on the attached plan) to no more than one metre in height above the ground level that existed prior to the erection of the fence.
N.B For the avoidance of doubt ground level is the height of the ground in between the fence and existing stone boundary wall.
 - The period for compliance with the requirements is 4 weeks.
 - Appeal B is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act also fall to be considered.
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Decision

1. The appeals are dismissed, planning permission is refused and the enforcement notice is upheld.

Procedural matters

2. Some of the appellants' evidence is that sections of the fence, marked on the plan in their submitted evidence as sections 1A and 1B, are replacement fences no higher than existed previously, and as such are not a breach of planning control. This is in effect an appeal on ground (c) – that those sections of fence do not amount to a breach of planning control. Although an appeal was not lodged on that basis the Council have addressed the matter in their statement. As such, I consider that it would not result in any injustice to either party to address this matter in my decision.

Appeal site

3. 1 Northfield Road (No. 1) is a large two storey semi-detached dwelling house constructed in stone, and positioned in an elevated and prominent corner position at the junction of Northfield Road and Halifax Road within the
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Northfield Conservation Area (NCA). Due to its corner position No. 1 has front and side gardens fronting the highway following the sweeping curve of the property's stone boundary wall.

4. A hedgerow that existed above the wall has been removed and replaced with a fence, now subject of this appeal, made from horizontally aligned timber boards. The fence is constructed in two parts; the first part is the length indicated as 1A on the appellants' plan which runs perpendicular from the back edge of the highway and forms part of the separating boundary with No. 3. The second part is that which runs along the front of the property and includes the return element indicated as 1B on the appellants' plan.

The appeal on ground (c)

5. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. This relates to the sections of fence indicated by the appellants as 1A and 1B. The burden of proof in a ground (c) appeal, being on the balance of probability, is on the appellant.
6. Article 3 and Class A, Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') grants planning permission ("permitted development") for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. However, the permission at A.1.(c) excludes any fence/wall which would exceed its former height, or, the height referred to in paragraph A.1 (a) or (b) of the Order as the height appropriate to it (1 metre in this particular case) if erected or constructed, "*whichever is the greater*".
7. The fencing is higher than 1 metre but the appellants argue that the appeal fencing is no greater in height than previously existed.
8. The appellants rely principally on their own photographs and a Google image to demonstrate that the appeal fencing is no higher than previously existed. However, these images offer limited views and appear to differ from the Council's images attached to their statement which show lower height fences. As such there is considerable ambiguity in respect of this part of the appellants' evidence. On balance, from the submitted photographs from both parties, it appeared to me during my visit to the site that the sections of fence at 1A and 1B were higher than previously existed. Overall, on the evidence before me, I conclude that the appellants' have not discharged the burden of proof upon them that the replacement fencing is no higher than previously existed.
9. Given these factors, and the limitation in the Order at Class A.1.(c), I am unable to find that the fencing is permitted development. Consequently, since no planning permission exists for the development, it is a breach of planning control.
10. The appeal on ground (c) therefore fails.

The appeal on ground (a)

11. The main issue is the effect of the development on the character and appearance of the area with particular regard to the NCA, and the effect on highway safety.

Character and appearance

12. Northfield Road is a wide tree lined-street. It comprises mainly mature residential properties constructed in stone, set back in their plots and separated from the pavement by low stone walls. I saw that this layout of plots and their boundary walls is typical of the prevailing character and appearance of the adjoining streets and this part of the NCA. Some plots have hedgerow or other shrubbery screening projecting above the low boundary walls. A few have timber fences, some of which have been drawn to my attention by the appellants.
13. The Council acknowledges, and I agree, that the fence is well made. However, due to its overall length, height, materials and contrasting appearance, I consider that it is starkly at odds with the form and construction of the low stone boundary walls which form a key element of the street scene and the NCA. Given the long sweeping property boundary to the junction with Halifax Road it is particularly incongruous in its immediate context at this very prominent location. Overall, I find that it results in an unacceptable level of harm to the character and appearance of the area and the NCA.
14. I acknowledge the appellant's evidence, including photographs, in respect of boundary fencing at other properties in the area. However, those are in far less prominent positions than is the fence subject of this appeal. They amount to relatively few exceptions to the prevailing character and appearance of the NCA I have described. They do not therefore set a precedent for allowing this appeal which I have found to result in an unacceptable level of harm.
15. The appellants say that the fence improves the property in terms of security and child safety. However, there are many ways of achieving such aims. There is no convincing evidence before me which demonstrates that those aims could not be achieved in other ways without resulting in the level of harm I have identified.
16. While I acknowledge the comments from third parties in support of the appeal these do not lead me to reach any different conclusion.
17. I conclude that the fence results in significant harm to the character and appearance of the area and fails to preserve or enhance the character of the NCA. As such it conflicts with Policies BE5, BE1 and BE2 of the Kirklees Unitary Development Plan (UDP).

Highway safety

18. The new vehicular access replaces a pedestrian only access, and hence now permits the entry and exit of motor vehicles.
19. I have no doubt that the appellants would take every care to avoid accidents. However, the height of the fence where it meets the back edge of the pavement results in the safety of pedestrians walking along the pavement towards the access (from either direction), particularly children, being very much dependent on drivers using the access, instead of pedestrians themselves also being able to have a sufficient view of emerging vehicles.
20. Given these factors I consider that the height of the fence has significantly increased the risk of harm with regard to highway safety. As such, it conflicts with the aims and objectives of UDP Policy T10.

21. I am not convinced that the fence at the original vehicular access, closest to the junction with Halifax Road, has resulted in any significant increase in risk of harm with regard to highway safety than was previously the case. However, this does not overcome the harm I have already found with regard to the character and appearance of the area.

Conclusion

22. The fence results in significant harm to the character and appearance of the area; it fails to preserve or enhance the character and appearance of the NCA; it also results in an increased risk of harm with regard to highway safety.
23. For all the above reasons the appeal on ground (a) fails.

Thomas Shields

INSPECTOR