

Appeal Decision

Site visit made on 18 January 2017

by John Whalley

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

Decision date: 23 January 2017

Appeal ref: APP/V4305/C/16/3152195; /96
9 Portway, Liverpool L25 0QT

- The appeals were made by Mr Graham Tudor, (APP/V4305/C/16/3152195), and Mrs Helen Tudor, (APP/V4305/C/16/3152196), under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the Knowsley Metropolitan Borough Council.
- The notice was issued on 24 May 2016.
- The breach of planning control alleged in the notice was: The unauthorised erection of a timber fence within the curtilage of the property adjacent to the passageway at the side of the property shown coloured blue on the plan attached to the notice.
- The requirement of the notice is to: Remove the unauthorised timber fence from the property within one month of the notice taking effect.
- The appeals were made on ground (a) as set out in s.174(2) of the Act.

Summary of Decision: The appeals fail. The enforcement notice is upheld.

Appeal development

1. The enforcement notice and subsequent appeals deal with solid timber panel fencing that the Appellants have erected on the side, south-western boundary of their domestic garden alongside a public footpath for a length of some 20m and, for about 6m, on the north-western side boundary of the garden to their newly built semi-detached house, No. 9 Portway, Liverpool. The south-western side appeal fencing runs immediately inside open mesh fencing that extends along the north-eastern side of the public footpath.

The appeals on ground (a)

2. The appeals on ground (a) ask that planning permission be granted to retain the fencing enforced against.
3. Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015, (the Order) permits the erection or construction of a fence not more than 2m high, provided it is not adjacent to a highway used by vehicular traffic. That permission would have applied to the appeal fencing, except that condition 22 to planning permission 13/00052/FUL dated 1 November 2013 for the development which included the appeal property said, at 22(v), "no buildings, gates, walls, fences or other structures shall be erected within the curtilage of the dwellings".

4. Mr Tudor, co-Appellant with his wife, said that the solid timber panel appeal fencing erected alongside the public footpath avoided exposing their children to possible antisocial behaviour, drug dealing and abuse that could arise from path users. Conversely, the Council said the planning permission for the housing development of the former St Andrews Church and Social Club site required the erection of an open mesh fence alongside the public footpath that runs immediately to the west of what is now No. 9 Portway in order to allow for natural surveillance of the path from the new houses.
5. The south-western side boundary of the public footpath opposite the side of No. 9 Portway is a 6m length of close boarded timber fencing, formed of long established close-boarded timber fencing. The remainder of the boundary to the other side of the public footpath opposite the appeal fencing is formed by the open front garden to the house at the end of Kingsthorpe Road and at the end of that road. The Council said the appeal fencing produced an unfortunate closed-in feeling for those using the path. That was not a feeling I had when walking along the reasonably open 2.5m wide public footpath. That aspect of the appeal fencing is not objectionable. As to the expressed need for open surveillance of those using the public footpath, open or low boundary treatments are useful in discouraging possible anti-social behaviour by those who might otherwise be hidden from public view. The appeal fencing is unhelpful in that regard. I recognise, however, that the laurel hedging planted alongside the appeal fencing by the Appellants may provide similar screening in time. I also note that the Council are not seeking the removal of the 6m length of appeal fencing that runs perpendicular to the line of the public footpath. However, the principle of ensuring that the public footpath should not be unduly enclosed by high fencing is sound.
6. An appeal made against the Council's refusal to grant planning permission under s.73A of the Act to retain timber fencing erected alongside the footpath at No. 7 Portway was dismissed by a decision dated 3 November 2016, (ref: APP/V4305/W/16/3156050). Much the same considerations to those before me appear to have arisen in that case. That decision does not determine Mr and Mrs Tudors' appeal. But rehearsing similar considerations makes it somewhat unlikely that a different decision is reached. Whilst, I understand the Appellants wish to shield their property from intrusive viewing inwards and of those who might carry out anti-social activities on the public footpath, I consider that the balance of benefits lies with the ability to allow surveillance of the path by the exclusive use of open mesh fencing. The appeals on ground (a) fail.

FORMAL DECISION

7. The appeals fail. The enforcement notice is upheld. Planning permission is not granted on the applications deemed to have been made for the retention of the timber fence erected alongside the public footpath at No. 9 Portway, Liverpool L25 0QT.

John Whalley

INSPECTOR