
Appeal Decisions

Site visit made on 24 January 2017

by Simon N Hand MA

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

Decision date: 1 February 2017

Appeal A: APP/L3815/C/16/3152938

Land at 100 Beach Road, Selsey, Chichester, West Sussex, PO20 0SZ

- 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 Gregory and Kinty Park against an enforcement notice issued by Chichester District Council.
 - The enforcement notice, numbered SY/65, was issued on 13 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a close boarded fence, over 1 metre in height, in the approximate position shown on the attached plan.
 - The requirements of the notice are (i) demolish the said close boarded fence including the concrete posts and, (ii) following compliance with (i) above, remove resultant debris from the land.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/L3815/C/16/3152939

Land at 100 Beach Road, Selsey, Chichester, West Sussex, PO20 0SZ

- 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 Kinty Park against an enforcement notice issued by Chichester District Council.
 - This appeal is identical to Appeal A above.
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Decisions for both Appeals A and B

1. The appeals are allowed on ground (f), and the enforcement notice is varied: by adding to requirement 5(i) after the word "posts", "or, reduce the fence and concrete posts to a height of no more than 1m". Subject to this variation the enforcement notice is upheld.

The Appeals on Ground (c)

2. This ground is that there has been no breach of planning control, as in this case, the development benefits from permitted development rights granted by Class A of Part 2 of Schedule 2 to the General Permitted Development (England) Order 2015. The development is a 2m high fence supported by concrete posts. The relevant restriction of Class A is that such a fence should not be more than 1m in height when "erected or constructed adjacent to a highway used by vehicular traffic".

3. No 100 stands at the end of a terrace of dwellings on the corner of Beach Road. The highway bends gently around the plot of No 100, and so the front and side/rear garden are contained within the curve of the highway. There was originally a wall, which seems from what remains, to have been around 2m tall. It would have separated the rear garden from the side garden and was set back in the plot some way from the edge of the highway. This has been removed and the fence erected instead, some distance from the old line of the wall, essentially annexing some of the side garden into the private rear area. This has taken the fence much closer to the highway.
4. The appellants arguments concerning sustainability and policy and the reasonable need for privacy, as well as the existence of covenants are all irrelevant to a ground (c) appeal, which is simply a matter of whether the permitted development rights of Class A apply or not. There are three parts to the fence, the part that faces the front garden or north-east. This is separated from the highway by an open front lawn, the pavement and a narrow grass verge. The second part faces south-east. At this point the highway curves around the plot of No 100 and this part of the fence is separated from the highway by a narrow band of grass, the pavement and another strip of grass verge. The third part of the fence returns towards the back garden and forms the rear of the newly annexed portion of garden, this faces south-west and runs away from the highway and is next to a parking space for the buildings beyond.
5. The question of what the phrase "adjacent to a highway" actually means is thus the key issue. The term adjacent is not defined in statute or case law and there is no maximum distance beyond which a fence ceases to be adjacent, nor does the fence need to be contiguous with the highway, as various appeal decisions supplied by the parties attest. It is a matter of fact and degree in every case.
6. I have no doubt the second part of the fence, as described above, is adjacent to the highway, however one defines the term adjacent. The first part is set some way back from the edge of the highway, but there is nothing in between except a lawn and in my view this too, although further away than the second part of the fence, is clearly adjacent to the highway.
7. The third part is more problematical. It consists of only two panels and small gate and only the very end is actually next to the road. However, it is part of the fence subject to the allegation in the notice, and only a small part of the overall fence. Also, this part of the fence is relatively short and even at its furthest extent is still close to the road. As adjacent does not necessarily mean contiguous I consider it remains, in its entirety, adjacent to the highway. Consequently, the allegation is correct as the fence is over 1m tall and is adjacent to the highway. It thus does not benefit from the permitted development rights granted by Class A. The appeals on ground (c) fail.

The Appeals on Ground (f)

8. Although there is no specific ground (f) appeal, the appellant's agent has several times made mention of the fact that in other appeals the enforcement notice allowed the fence or wall to remain if reduced to 1m in height. I consider this to be a hidden ground (f). The allegation refers specifically to a fence that has been erected over 1m in height. In my view therefore there would be no injustice to either party if I were to allow the appeal on ground (f)

and vary the requirement to allow for the option of reducing the fence to 1m. Such a reduction would bring the fence within permitted development limits and so would be unobjectionable and is clearly a lesser step that would overcome the Council's objections.

Simon Hand

Inspector