
Appeal Decision

Site visit made on 3 February 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 9 February 2017

Appeal Ref: APP/L3625/C/16/3149173

10 Windmill Way, Reigate, Surrey RH2 0JA

- 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 Janice W O'Neill against an enforcement notice issued by Reigate & Banstead Borough Council.
- The enforcement notice was issued on 15 March 2016.
- The breach of planning control as alleged in the notice is: The erection of a garden fence is in excess of 2 metres in height, in the approximate position marked with a cross on the attached plan, without the benefit of planning permission, as marked with a black cross and line A-B on the attached plan. (Plan attached to the Notice).
- The requirements of the notice are: Reduce the fence height so it does not exceed 2 metres in height when measured from the natural ground level at 10 Windmill Way, Reigate, Surrey RH2 0JA.
- The period for compliance with the requirements is 3 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Procedural issues and background

1. Shortly before the site visit, the appellant submitted 3 photographs of part of the fence between No.10 and No.8. These undated photographs and the accompanying notes have been circulated and the representations received have been taken into account in my decision.
 2. The appellant granted access to her back garden as she was unable to attend the site visit. I visited the appeal site unaccompanied and then saw the site from the neighbouring house and garden.
 3. The land hereabouts falls to the south and to the east so that the rear garden of No.10 is about 1 metre lower than that at No.8. The land rises from the front of each plot so that the rear garden is elevated. Consequently the base of the boundary fence between No.10 and No.8 steps up to the rear. It appears that part of the fence between the two properties blew down in a storm and the appellant erected a new section of fence in November 2014.
 4. No.10 is sited forward of the predominant building line in Windmill Way so that the rear elevation is roughly in line with the front elevation of No.8. Thus the flank wall of No.8 is a feature that visually encloses the patio to the rear of No.10. To the side of No.8 is a narrow covered walkway providing access to the front of the house. This feature, which is between the flank wall and the
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boundary with No.10, was re-built recently but there is no evidence before me to suggest that the height or footprint was altered. The section of reed fence subject of the appeal has been erected adjacent to the covered walkway.

Appeal on Ground (c)

5. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. It is one of what are termed the "legal grounds" of appeal against an enforcement notice and the onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability. To succeed the evidence submitted must be sufficiently precise and unambiguous.
6. In a nutshell, the appellant's argument under this ground is that the fence that has been erected is simply a replacement for that damaged in the storm. In these circumstances she says that because the replacement fence is no higher than the original fence no (express) planning permission is required.
7. Part 2 Class A of The General Permitted Development (England) Order 1995¹ as amended)(the GPDO) says, subject to various exceptions, that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is 'permitted development'. In terms of the exceptions, Class A.1 (b) says that any such fence should not exceed 2 metres above ground level. However, in the circumstances where the former height of a fence was higher than 2 metres, Class A.1 (c) permits the erection of a higher structure not exceeding that former height.
8. None of the photographs provided by the appellant show the 'previous' fence in place, and thus there is no contemporary evidence of its height as seen from the garden of No.10. However photograph '3' shows a basket weave panel leant against the boundary. It appears that this may be the panel that blew down.
9. This finding is supported by three photographs submitted by a neighbour. The first of these is taken from No.8, where a basket weave panel is visible in a photograph taken from a kitchen window. The other two photographs were taken by a property manager in April 2009 and show the basket weave fence in place as seen from No.10. I thus find on the balance of probabilities that the fence panel propped up against the boundary was that previously in place. The photographs also shows that the 'previous' fence was erected in a different alignment and was supported by the dwarf wall around a pebble feature and the adjacent planter on the area of patio to the rear of No.10. These features are located to the south of the 'replacement' fence and thus, as a matter of fact, the new fence has been erected closer to No.8 because it is now attached to the top of the retaining wall. The garden features are located up to about 60cm south of the retaining wall. I also find that this conclusion is supported by the images on the aerial photographs which show a gap between the covered walkway and the earlier fence.
10. From my observations on site I have no doubt that the reed fence panel is taller than the basket weave panel and it has been mounted on a higher wall and closer to No.8. Moreover the height is increased by the two timber planks that have been erected above the fence panel so that they screen the eaves of

¹ This document was consolidated in 2015 but in terms of the matters relevant to this appeal, there is no material difference.

the replacement covered walkway to No.8. The total height of the new fence panel including the retaining wall is about 3.5 metres above the adjacent ground level within the garden of No.10.

11. In these circumstances I find that the appellant's version of events less than probable and the evidence I saw at the visit and that submitted by a neighbour casts serious doubts on her claim that the section of fence now in place is simply a replacement. The November 2014 fence is, as a matter of fact, materially different from the panel that was blown down because it has not been erected in the same place and it is higher than that previous fence.
12. Section 57(1) of the Town and Country Planning Act 1990 as amended (the Act) says that planning permission is required for any development of land other than in respect of specified exceptions. One such exception is where planning permission has been granted by a development order, in this case the GPDO. The appellant says that the fence benefits from the deemed permission conferred by the GPDO². However, on the balance of probability, I find that the fence exceeds 2m in height and it is not a direct replacement because it has not been erected on the same alignment as that previously in place. In these circumstances the section of fence does not benefit from that exception.
13. Consequently, the fence requires an express planning permission. Section 171A (1)(a) of the Act says that the carrying out of development without the required planning permission constitutes a breach of planning control. In the absence of any such permission the appeal on Ground (c) fails.

Formal Decision

14. The appeal is dismissed and the enforcement notice is upheld.

Sukie Tamplin

INSPECTOR

² At the date the fence was erected this was the Town and Country Planning (General Permitted Development) (England) Order 1995 (as amended) but the relevant provisions were subsequently amalgamated into the 2015 Order.