
Appeal Decision

Unaccompanied site visit made on 6 February 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 13 February 2017

Appeal Ref: APP/P1940/C/16/3151197 to 201

47 Sandy Lodge Road, Moor Park, Rickmansworth, WD3 1LN

- 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 1990 Act").
- The appeal is made by Parag Majitha, Shaina Majitha, Sachin Majitha, Bhanumat Majitha & Nitha Majitha ("the Appellants") against an Enforcement Notice issued by Three Rivers District Council ("the Council").
- The Enforcement Notice, numbered 16/0018/ENFNOT, was issued on 4 May 2016.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission the erection of an over height close boarded timber fence (the length and location of which is shown marked red between an "x" and an "x" on the plan attached to the Enforcement Notice).
- The requirements of the Enforcement Notice are: 1. Reduce the height of the fence (including any posts) between the two points marked with an "x" on the plan attached to the Enforcement Notice so that it does not exceed 2 metres in height; OR 2. Permanently remove from the Land the fence between the two points marked with an "x" on the plan attached to the Enforcement Notice.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in Section 174(2)(d) and (f) of the 1990 Act.

Summary of Decision: The appeals are dismissed and the Enforcement Notice upheld.

Procedural Matters

1. In my Appeal Decision I will refer to the fence which is the subject of this Enforcement Notice as "the Fence".
2. The Appeal Site falls within the Moor Park Conservation Area. Further, the boundary along which the Fence has been erected:
 - a) Is the boundary between the Conservation Area and the Green Belt.
 - b) Is the rear boundary of No. 47.
 - c) Separates No. 47 from Merchant Taylors' Prep School ("the School").
3. The issue of the impact of the Fence on the character and appearance of the Conservation Area and the Green Belt are not matters that are relevant to the determination of this appeal due to of the nature of the grounds of appeal relied on by the Appellants.
4. The Appellants were on holiday at the time when the Planning Inspectorate sought to arrange a site visit. With the permission of the School I was able to clearly view the Fence from the School's grounds.

Reasons

Ground (d) that at the date when the Enforcement Notice was issued, no enforcement action could be taken in respect of any breach of planning control

5. The Enforcement Notice was issued on 4 May 2016. In this case the Council would not be able to take enforcement action against the Fence if it had been substantially completed on or before 4 May 2012.
6. The Fence varies in height and is built of wooden planks which have been laid horizontally. No part of the Fence is lower than 2m in height above ground level.
7. The onus of proving that the Fence had been substantially completed on or before 4 May 2012 rests with the Appellants. They have to show this on the balance of probabilities.
8. The Appellants rely on the assertion made in their Grounds of Appeal dated 25 May 2016 which states that, *"The fence has been in situ at the current height in excess of 2m for more than 16 years and at all times since the Appellant acquired the subject property. A small additional section of fence was erected in the past 6 months to further protect the property."*
9. No sworn statements or any dated photographs of any enclosures along the relevant boundary were submitted by the Appellants to support the assertions made above.
10. The Council received a complaint about the Fence which led to an inspection by a Council Enforcement Officer in late August 2015.
11. It is clear to me that it is highly likely that there was a fence or some other form of boundary treatment which delineated the boundary between No. 47 and the School not least to provide some security for the Appellants' home and the School. However, there is no evidence that the former boundary treatment exceeded 2m in height. Had it done so it seems highly likely to me that this would have been reported to the Council as fences of that height are wholly out of character in this area.
12. I also noted from my site visit that the Fence looks like it is relatively new and not a fence which is 16+ years old.
13. I therefore conclude that at the date when the Enforcement Notice was issued enforcement action could be taken in respect of the Fence. The appeal on Ground (d) therefore fails.

Ground (f) that the steps required by the Enforcement Notice to be taken, exceed what is necessary to remedy the breach of planning control

14. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified seek to achieve either:
 - a) Remedying the breach of planning control by making the development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. Or

- b) The restoration of the land to its condition before the breach took place.
15. In this case the planning permission to which I refer in paragraph 14(a) above is that which is granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order"). The Order allows for, amongst other things, the erection of fences. However, such permission is not allowed if the height of the fence exceeds 2m above ground level. As stated above the Fence does exceed that height limit.
16. Section 174 of the 1990 Act sets out the statutory code for appeals against Enforcement Notices. An appeal on Ground (f), in a case such as this, is limited to an argument that the steps specified in the Enforcement Notice exceed, as a matter of fact, what is necessary to remedy the breach of planning control.
17. In my view the requirements of this Enforcement Notice are entirely appropriate to achieve the objectives of either making the development comply with the Order or restoring the land to its condition before the breach took place and there are, in my assessment, no lesser steps that could be taken to achieve either of these objectives.
18. The Appellants have not suggested any lesser steps which could achieve either of the purposes which the Enforcement Notice seeks.
19. In this case the Appellants have stated, *"The subject property immediately adjoins an overhead railway line and the height of fence is absolutely necessary to protect the property and its occupants, who include an elderly and vulnerable person, from unwarranted visual and physical intrusion from the railway line. Unlawful intrusion has taken place within the past 6 months and the Enforcement Notice is an excessive and inappropriate remedy as the Local Authority have failed in their primary duty of care to protect the occupants of the subject property, who are law abiding Council Tax payers, from unlawful intrusion by failing to protect the property from visual and physical intrusion from the adjoining railway line and by failing to ensure that the railway landowners provide their own protection. As a consequence of the failure of the Local Authority in their Duty of Care the Appellant has had to take his own protection measures and the Enforcement Notice is an unwarranted and wholly inappropriate measure as the fence which is the subject of the Complaint has no impact on any property touching and concerning the subject property, or, any of its neighbours and is therefore not properly the subject of Planning Control of this nature"*.
20. The Grounds of Appeal put forward by the Appellants relate to reasons why planning permission should be granted for the Fence. The Appellants have not appealed the Enforcement Notice on Ground (a) which would have allowed me to consider those matters.
21. I conclude that no good reason is advanced by the Appellants as to why the requirements of the Enforcement Notice exceed what is necessary to either make the Fence comply with the terms of the Order or to restore the land to its condition before the breach took place and, for the reasons explained above, this is the limited scope of a Ground (f) appeal in a case such as this. This ground of appeal must therefore fail.

Conclusion on Grounds (d) & (f)

22. For the reasons given above I consider that the appeal should not succeed.

Formal Decision

23. The appeals are dismissed and the Enforcement Notice upheld.

Tim Belcher

Inspector