

Appeal Decision

Site visit made on 20 March 2017

by T Shields DipURP MA MRTPI

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

Decision date: 13 April 2017

Appeal Ref: APP/N2345/X/16/3161976

8 Kingsmuir Avenue, Fulwood, Preston, PR2 6AG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Johnathan Phillips against the decision of Preston City Council.
 - The application Ref 06/2016/0468, dated 1 June 2016, was refused by notice dated 7 July 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a LDC is sought is a proposed fence.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. For the avoidance of doubt, I should explain that matters such as planning policies, the finished appearance of the proposed fence, and its impact on the visual amenity of the surrounding area are not relevant in this appeal. Nor is the existence of other fences or walls in the local area. My decision rests solely on the facts of the case, and on relevant planning law and judicial authority in determining whether or not the proposed fence would be lawful.
3. The proposed timber fence would be located to the side of No. 8 Kingsmuir Avenue, taking a line which would angle outwards to the rear, and would be constructed to a height of 1.8 metres along its length. As such, it would be 'development' within the meaning of section 55 of the Act and requires planning permission.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded. This turns on whether the proposed fence would benefit from the planning permission for gates, fences and walls granted by Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order).

Reasons

5. Class A of the Order grants planning permission as follows:

The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

6. But development is not permitted by Class A if -

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed –

(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;

(ii) in any other case, 1 metre above ground level;

7. Clearly the fence would be greater than 1 metre in height. Therefore the key determining factor is whether the fence would be constructed *adjacent to a highway* for the purposes of the Order.
8. A fence/wall does not have to touch the edge of a highway to be considered adjacent. Indeed, there may be some distance between a highway edge and a fence/wall serving a property, yet it may still be close enough to have the perceived function of forming a highway boundary. Whether a fence/wall would be adjacent in such circumstances is a matter of fact and degree in each case.
9. The Council have supplied undisputed evidence¹ showing the extent of the highway and I have no reason to doubt its accuracy. Significantly, having regard to that plan, it should be noted that a continuous strip of the soft grass verge, where it follows the curved line of the hard-surfaced carriageway, is also part of the adopted highway. As such the proposed fencing indicated on the appellant's submitted plans would run along or very close to the back edge of that adopted highway. Consequently, as a matter of fact and degree I find it would be adjacent to the highway.
10. Since it would be adjacent to the highway and exceed 1 metre in height it would not benefit from the planning permission granted by the Order.

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of the proposed fence at 8 Kingsmuir Avenue, Fulwood, Preston, was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Thomas Shields

INSPECTOR

¹Highway Authority (Lancashire County Council) plan showing extent of adopted Highway