



Appeal Decision

Site visit made on 4 July 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 13 July 2017

Appeal Ref: APP/W1905/C/17/3171394

134 Northfield Road, Waltham Cross, Hertfordshire EN8 7RE

- 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 Adedayo Daodu against an enforcement notice issued by Broxbourne Borough Council.
 - The enforcement notice was issued on 10 February 2017.
 - The breach of planning control as alleged in the notice is the carrying out of development without the required planning permission consisting of the erection of a front boundary enclosure consisting of a masonry wall with metal railings atop and masonry piers.
 - The requirements of the notice are (i) Remove the front boundary treatment in its entirety; or (ii) Alter the development so that no part of the front boundary treatment adjacent to a highway is above 1 metre in height.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. It was pointed out to the appellant that if he wished the planning merits of the appeal to be considered, as set out in his grounds and illustrated in his photographs, then he should plead ground (a), that planning permission should be granted for what is alleged, and pay the relevant fee. However, ground (a) was not pleaded and no fee was received. I am therefore unable to have regard to these particular submissions.

The ground (b) appeal

3. Under a ground (b) appeal the onus of proof falls upon the appellant to show that the alleged breach of planning control has not occurred as a matter of fact. In this respect the appeal must fail. At the site visit I saw that a wall, piers and railings had been erected around the front garden of the property. The matter alleged has therefore occurred as a matter of fact. The appeal on ground (b) fails.

The ground (c) appeal

4. Under a ground (c) appeal the onus of proof is on the appellant to show there has not been a breach of planning control. In this case the appellant explains he did not seek planning permission for the development and that he believes

the enclosure is 'permitted development'. This is because that part of the wall over 1m high is 'see-through' as railings have been fitted. He states that this is the advice he received from the Council.

5. The erection of the boundary enclosure comprises operational development within the meaning of section 55 of the Town and Country Planning Act 1990 for which section 57 indicates planning permission is required. In some cases express planning permission is not required before development is carried out as it is already 'permitted development' (PD). In order to be PD the development needs to comply with all of the provisions of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Class A only permits the erection of a means of enclosure provided its height adjacent to a highway does not exceed 1m above ground level. This includes the railings as they also enclose the front garden. The Council advise that the appellant's enclosure measures 1.8m at the highest point above ground level.
6. I therefore conclude that the erection of the boundary enclosure is not PD as set out in Class A of the GPDO. The development as constructed therefore constitutes a breach of planning control and the appeal on ground (c) fails.

Other Matters

7. Whilst grounds (f) and (g)¹ have not been pleaded, the appellant explains a lower means of enclosure would cause him problems including in terms of costs. He states he is a young homeowner who works as a fundraiser for charities and with a small back garden he enclosed the larger front garden to allow his dogs a safe space to run around. These submissions are, in essence, that the Council's requirements are excessive and that the appellant needs more time.
8. The appellant though has neither provided details of any lesser steps which would remedy the breach of planning control nor stated what would be a more appropriate period of time to comply with the notice. The Council submits that the need to keep the dogs secure in the front garden does not outweigh the harm caused by the development to the character and appearance of the area. They also state that they attempted to negotiate with and find a solution for the appellant to no avail. Whilst the Council's first point relates to an argument under ground (a), which has not been pleaded, the second statement appears to demonstrate that the Council has followed good practice in seeking to resolve the situation prior to the issue of the notice.
9. In the absence of any lesser steps it is not possible to judge whether the Council's requirements are excessive or not. Furthermore, as any extension of time has not been justified in any detail I consider that two months is a reasonable period to carry out the works.

Conclusion

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

D Fleming INSPECTOR

¹ (f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections; and (g) The time given to comply with the notice is too short.