The Planning Inspectorate

Appeal Decision

Site visit made on 17 July 2017

by D H Brier BA MA MRTPI

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

Decision date: 28 July 2017

Appeal Ref: APP/P2365/C/16/3165051,3165052 & 3165053
Oakdene, Sanderson Lane, Hilldale, Heskin, Chorley PR7 5PX

- 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 J Finnamore, Mrs L Finnamore & Miss A Finnamore against an enforcement notice issued by West Lancashire Borough Council.
- The enforcement notice was issued on 25 November 2016.
- The breach of planning control as alleged in the notice is the erection of close boarded fencing and gates.
- The requirements of the notice are:
  1. Dismantle the fence, fence posts, gates and gate posts between points A & B and B & C indicated on Plan 2 attached to the notice.
  2. Remove the resulting materials from the site.
- The period for compliance with the requirements is 3 months. .
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for the appeals made by Mrs L Finnamore & Miss A Finnamore, their appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed.

Background

1. The appeal site lies in the Green Belt. The fence in question has been erected on part of the appeal property's rear garden, beyond which is a field. The gates are set at a right angle to the fence and are positioned between the site's boundary and a detached garage and store building. Condition 3 of the planning permission for 'Oakdene', granted in 2005[1], effectively removes certain 'permitted development' rights conferred by the Town and Country Planning (General Permitted Development) Order 1995 and any subsequent Orders[2], including those appertaining to means of enclosure.

2. An appeal under section 78 of the 1990 Act against the Council's refusal to grant planning permission for the development in question was dismissed by decision dated 21 February 2017.[3]

[1] Planning permission reference 2005/0793 for the erection of a replacement dwelling, granted on 10 August 2005.
[2] Now contained in the Town and Country Planning (General Permitted Development) Order 2015.
[3] Appeal decision reference APP/P2365/D/16/3161693.

Appeal on Ground (a)

3. I consider the main issue is whether there has been any material change in the circumstances since the 21 February 2017 appeal decision.

4. No claim has been made that this is the case, nor am I able to identify anything that points to this. Neither is there anything that indicates that the provisions of the development plan and the Supplementary Planning Document – Design Guide, referred to in the reasons for issuing the notice, or national policy, all mentioned in the relatively recent appeal decision, have changed. Furthermore, from what I saw at my site inspection, I see no reason to take issue with the findings of the previous Inspector, as set out in the section 78 appeal decision.

5. All this leads me to conclude that there has not been any material change in the circumstances since the earlier appeal decision. Accordingly, therefore, the appeal on ground (a) fails and planning permission will not be granted on the deemed application.

Appeal on Ground (f)

6. It is contended that the requirement is excessive and lesser steps could be taken to address the alleged breach. In this respect it is suggested that the fence could be reduced in height.

7. I acknowledge that it is not unreasonable for the appellants to want to have some form of boundary demarcation. Indeed, in referring to appropriate alternative boundary treatments, the Council do not appear to take issue with this matter in principle. Rather the concern, which I find well-founded, focuses on the type of enclosure that has been erected. In the light of this, I consider the requirements of the notice represent a reasonable response to the breach of planning control alleged therein and are not excessive.

8. In the light of the foregoing, the appeal on ground (f) fails.

Formal Decision

9. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D H Brier

Inspector