
Appeal Decision

Site visit made on 1 August 2017

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 11 August 2017

Appeal Ref : APP/D3830/C/16/3166308

Land at 30 Burdocks Drive, Burgess Hill, West Sussex, RH15 OHH

- 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 Mrs Charlotte Wyatt against an enforcement notice issued by Mid Sussex District Council.
- The notice was issued on 14 December 2016.
- The breach of planning control as alleged in the notice is breach of condition 9 of planning permission reference BH/102/77 as amended by letter of 14 October 1977 ref: DL/JEC/23 (the Permission). The Permission is for the erection of 164 dwelling units, roads, sewers, open spaces, play area and car parking spaces at land to the north of Folders Lane. Condition 9 of the Permission says 'Notwithstanding the provisions of the Town and Country Planning General Development Order 1977, no gate, fence, wall or other means of enclosure, boat or caravan, shall be erected, constructed or placed in front of the forwardmost part of the proposed buildings which front on a highway unless permission is granted by the local planning authority on an application in that behalf'. The notice alleges that the condition has not been complied with because a boundary fence has been erected to the front of the property in the approximate position shown in green on the plan attached to the notice.
- The requirements of the notice are 1. to remove the fence in its entirety from the land and 2. to remove from the land all other materials and debris resulting from step 1.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed

Ground (a) appeal and deemed application

Main Issue

1. The Permission includes a condition (condition 9) preventing the erection of the fence the subject of this appeal. Therefore the main issue in this appeal is the effect of the erection of the boundary fence in contravention of condition 9 on the character and appearance of the surrounding area.

Character and appearance

2. The development plan (including saved policies in the Mid Sussex Local Plan (the Local Plan)) mirrors the National Planning Policy Framework (the Framework) in requiring high standards of design that reflect their surroundings. I have taken into account the Burgess Hill Neighbourhood Plan as a material consideration. I note the emerging District Plan but as this is not adopted this limits the weight that I attach to its policies. Policy B1 of

the Local Plan provides that development is required to demonstrate a sensitive approach to urban design by respecting the character of the locality.

3. The appeal site is a semi-detached dwelling forming part of a wider residential development. It sits in a block of similar dwellings. The property is set back from the road with a flat front garden.
4. The surrounding area is characterised by its generally open boundary treatment with some natural vegetation boundaries. In contrast the close board boundary fence the subject of the notice creates an enclosed and alien appearance. It abuts the pavement and extends along the frontage of the property unattached at either end. It is highly visible from the streetscene and is not in keeping with its surroundings. Removal of condition 9 would not reflect the open character and appearance of the area.
5. The Appellant draws to my attention other properties in the locality. I have considered these properties, and the photographs provided, when assessing the character and appearance of the locality. I do not know the particular circumstances of the specific premises drawn to my attention and have determine this appeal on its particular facts. But in any event development similar to that attacked by the notice is not widespread and not so prevalent as to be characteristic of the area.
6. The Appellant suggests that condition 9 infers that so long as an application is made to the Council permission for a gate, fence or means of enclosure will be granted. I disagree. The condition clearly removes permitted development rights and requires an application to be determined by the Council on its merits. I note that the Appellant says that a Council representative suggested that permission would be a formality but the Council is not bound by informal advice.
7. I have taken into account the Appellant's concerns to protect her property from dog fouling and her concerns to ensure the health and safety of her family in respect of road safety and potential illness from dog fouling. I have also taken account of the Appellant's view that the fence provides some deterrent from crime and disorder. Whilst I sympathise I am not persuaded that these concerns could not be addressed without causing harm to the character and appearance of the area. I have balanced the interest of the Appellant in preventing dogs from entering her land and providing security for her children against the identified harm. The balance in this case rests in favour of preventing harm to the character and appearance of the area.
8. I have no reason to doubt the Appellant when she says that she was not aware that the erection of the fence was a breach of planning control but this is not a ground of appeal and not a matter that I have taken into account. Comments raised about the Council's motivation for the enforcement action are also not within my remit.
9. For these reasons I conclude that the removal of the condition would cause undue harm to the character and appearance of the area and does not accord with the development plan, including policy B1 of the Local Plan and the Framework.

10.I have considered whether conditions could overcome the identified harm. None is suggested by either party. I have taken into account the Planning Practice Guidance but no condition would overcome the identified harm.

11.For the reasons given I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant permission on the deemed application.

Formal Decision

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

S.Prail

Inspector