
Appeal Decision

Site visit made on 20 March 2018

by Daniel Hartley BA Hons MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2018

Appeal Ref: APP/M2325/C/17/3179029

Land at Chestnut Villa, Bradshaw Lane, Greenalgh, Lancashire PR4 3HQ

- 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 Michael Cossins against an enforcement notice issued by Fylde Borough Council.
 - The enforcement notice, numbered EN/15/0218, was issued on 10 May 2017.
 - The breach of planning control as alleged in the notice is described as a timber fence and gate pillars, over 1 metre in height have been erected at the eastern boundary of the land adjacent to Bradshaw Lane, in the approximate position between points A-B as marked on the plan attached to the notice.
 - The requirements of the notice are to remove the gate pillars and fence or reduce their height to no greater than 1 metre above the level of the adjacent ground between points A-B on the plan.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The notice was served by the Council after the consideration and dismissal of a planning application appeal for the same development (appeal reference No APP/M2325/D/16/3146863). The Council have included a copy of that decision as part of its appeal statement and the appellant has referred to alternative boundary treatment options as part of his appeal. I have dealt with these matters on the basis that the appeal is proceeding solely on grounds (f) and (g) of Section 174(2) of the Town and Country Planning Act 1990 (as amended) (TCPA).

The appeal on ground (f)

3. An appeal on ground (f) makes the claim that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

4. The breach of planning control is the erection of a timber fence and gate pillars over 1 metre in height and requirement 5(A) of the notice requires the removal of the gate pillars and fence or to reduce their height to no greater than 1 metre above the level of the adjacent ground (between points A-B shown on the plan attached to the notice). The purpose of the notice therefore lies within sections 173(4) (a) and (b) of the TCPA and is to either remedy the breach of planning control that has occurred or to remedy any injury to amenity which has been caused by the breach. This can be done in this case, either by making the development comply with what could be achieved under permitted development rights or by restoring the land to its condition before the breach took place.
5. The appellant has suggested that the requirements of the notice are excessive and that alternative proposals including (i) removal of the unauthorised fence and gate posts and replacing them with a temporary fence until a Leylandii hedge reaches sufficient maturity or (ii) the planting of a new hedge to screen the development from the road, would remedy the breach of planning control. However, the erection of a new, albeit temporary fence at (i) above would amount to a different form of development relative to the allegation in the notice. In the absence of a ground (a) appeal (i.e. that planning permission should be granted for the development enforced against), I am unable to consider the planning merits of alternative options. In any event, the planning merits of retaining the unauthorised development were considered by an Inspector as part of the consideration of planning appeal APP/M2325/D/16/3146863.
6. In addition to the above, whilst the planting of a hedge would not amount to development requiring planning permission, such a step would not remedy the breach of planning control which is the erection of the fence, and whether the hedge would remedy any injury to amenity is a planning judgment that could only be made under an appeal on ground (a).
7. In conclusion, the requirements of the notice give the appellant the opportunity to bring the fence down to the height that would be permitted under the Town and Country Planning (General Permitted Development) (England) Order 2015 as an alternative to complete removal. I therefore conclude that the steps in the notice are not excessive. The lesser steps suggested by the appellant would not remedy the breach of planning control or injury to amenity which has been caused by the breach.
8. For the above reasons, the appeal on ground (f) fails.

The appeal on ground (g)

9. The appeal on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
10. The enforcement notice states that either of the requirements must be complied with by no later than six months from the date that the enforcement notice takes effect.
11. The appellant has commented that he would like additional time for a boundary hedge to reach maturity before the fence /gate pillars are reduced in height to 1 metre. As part of the appeal, the appellant comments that he would need until September 2018.

12. In dismissing this appeal, the enforcement notice would take effect from the date of this decision. A six month compliance period would relate closely to the appellant's request for a compliance period which extends to September 2018. On the evidence that is before me, I consider that six months is an adequate period to ensure compliance with either of the requirements of the notice.

13. For the reasons outlined above, the appeal on ground (g) fails.

Other Matters

14. Reference has been made by the appellant to other fences in the locality which exceed 1 metre in height. I also note the comments made by the occupier of Greenbank Farm who considers that the fence does not cause harm to the character and appearance of the countryside and who states that there are similar fences elsewhere in Weeton Village and The Rowans, Fleetwood Road, Greenhalgh. However, these are not matters which fall to be considered in respect of this appeal which has been made under grounds (f) and (g) only.

Conclusion

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

Daniel Hartley

INSPECTOR