



Appeal Decision

Site visit made on 25 April 2018

by Simon Hand MA

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

Decision date: 11 May 2018

Appeal Ref: APP/Z2830/C/17/3180375

Land at Potterspury House, 3 Poundfield Road, Potterspury, Towcester, NN12 7QL

- 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 Richard Armstrong against an enforcement notice issued by South Northants District Council.
 - The enforcement notice was issued on 21 June 2017.
 - The breach of planning control as alleged in the notice is the erection of a wooden fence above a stone boundary wall, being adjacent to a highway and in excess of 1m high overall in approximately the line drawn in blue on the attached plan.
 - The requirements of the notice are take down the fence including all support posts, and remove the constituent parts from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

The Appeal on Ground (c)

2. This ground is that there has been no breach of planning control because in this case the works are permitted development. The appellant relies on Part 2 Class A of the General Permitted Development (England) Order 2015. Class A allows the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. The appellant argues that what he has done amounts to "*maintenance, improvement or alteration*", of the fence. A.1 lists the factors that would make the works not permitted development and it is common ground that a fence adjacent to the highway, as this fence is, cannot be more than 1m tall. However, A.1(c) says "*the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater*". Thus, if a fence is taller than 2m it can still be "*maintained, improved or altered*" and those works would be permitted development as long as the resulting fence is no taller than it was originally.
3. This appeal therefore turns on whether the works to the fence can be said to be maintenance, improvement or alteration. In my view the appellant has demonstrated that there has been a fence in place for many years, at least

since the 1970s, and this fence was almost completely overgrown with creeper. Photographs from 2015 and 2016 show the old fence entirely overgrown. It seems the appellant then employed a contractor to replace the fence with a new one. The appellant removed the old fence, and all the creeper, leaving just a number of posts, hoping they could be re-used by the contractor. In the event the old posts were cut down and an entirely new fence erected. In my view this is not simply maintenance, improvement or alteration. These words carry the connotation that the original fence remains, but has been altered or improved in some way. Perhaps a new panel replaced, or some new posts, but in this case an entirely new fence has been erected which is a separate act of development. Consequently it does not fall within the works allowed by A.1(c) and so is not permitted development. The appeal on ground (c) fails.

The Appeal on Ground (f)

4. This ground is that the requirements are excessive. In this case the allegation is the erection of a fence and the requirements are to remove it. This does not seem excessive to me.
5. The appellant argues that he could make the fence acceptable by planting, in other words returning it to look like the original fence. No ground (a) appeal has been made in this case so the ground (f) cannot be turned into a discussion of the planning merits of the fence and whether it could be made to fit in better. These are matters that should have been considered during the planning application and subsequent appeal¹ to retain the fence. It does not seem the Inspector in that appeal was asked to consider conditions that could ameliorate the harm and dismissed the appeal as the fence, as constructed, was harmful to the character and appearance of the surrounding area. I appreciate that the appellant is unrepresented, but that is his choice. The only way to make the fence lawful now would be to grant planning permission for it with conditions and I simply do not have the power to do so. The appeal on ground (f) fails.

Conclusion

6. I shall dismiss the appeal and uphold the notice.

Simon Hand

Inspector

¹ APP/Z2830/D/17/3177518 Issued 18 August 2017