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# Appeal Decision

Site visit made on 18 June 2018

**by D Hartley BA (Hons) MTP MBA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 June 2018**

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**Appeal A Ref: APP/T2405/C/17/3180151**

**Appeal B Ref: APP/T2405/C/17/3180152**

**Land at 19 Grove Road, Whetstone, Leicestershire LE8 6LN**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - Appeal A is made by Mr Peter Snodin and Appeal B is made by Mrs Julia Ann Snodin against an enforcement notice issued by Blaby District Council.
  - The enforcement notice was issued on 30 November 2017.
  - The breach of planning control as alleged in the notice is the erection of a front/side boundary fence with a total height of over 1 metre located adjacent to a highway (Grove Road, Whetstone) on the land to which this notice relates. The approximate location of the fence is indicated in blue on the plan attached to the notice.
  - The requirements of the notice are to reduce the total height of the fence in its entirety to no more than 1 metre measured from the level of the land on which it is erected.
  - The period for compliance with the requirements is 1 month.
  - Appeal A is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (g) of the Town and Country Planning Act 1990 as amended and Appeal B is proceeding on the grounds set out in section 174(2) (b), (c) and (g) of the Town and Country Planning Act 1990 as amended.
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## Decisions

**Appeal A Ref: APP/T2405/C/17/3180151**

1. 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.

**Appeal B Ref: APP/T2405/C/17/3180152**

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

## Appeals on ground (b)

3. An appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control have not occurred. However, on the evidence that is before me including dated photographs from the Council and my own inspections as part of my site visit, the subject fence has been erected on the land. Therefore, the alleged breach of planning control has occurred and the ground (b) appeals fail.

### **Appeals on ground (c)**

4. The appeals made on ground (c) claim that the matters alleged do not constitute a breach of planning control.
5. The appellants' case under ground (c) is that they do not consider that the fence requires planning permission in so far that it is permitted development by virtue of Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is not permitted if the height of any gate, fence, wall or means of enclosure erected or constructed "*adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1.0 metre above ground level*". There is no dispute between the parties that the fence exceeds 1.0 metre in height above ground level: according to the Council it is about 1.8 metres in height. However, Class A of the GPDO allows fences to be erected up to 2.0 metres in height where they are not adjacent to a highway. The appellants contend that the fence is not adjacent to the highway (i.e. Grove Road) and hence it is permitted development as it does not exceed 2.0 metres above ground level.
6. The GPDO does not define what is "*adjacent*" to a highway. However, the matter has been considered by the courts in respect of the case of *Simmonds and Others v Secretary of State for the Environment and Rochdale Metropolitan District Council* 1980 albeit it that such a case focused on a previous GPDO which included the word "*abut*" and distinct from "*adjacent*" to a highway. I have considered the aforementioned case law as well as the two appeal decisions<sup>1</sup> submitted by the Council where "*adjacent*" to a highway was considered by the respective Planning Inspectors.
7. In summary, whether a fence is adjacent to a highway is a matter for the decision maker on a fact and degree basis. I do not consider that the fence has to physically touch the highway for it to be considered to be adjacent. In this case, the appeal fence is set a very short distance back from the highway and it is separated from it by a narrow grass embankment. Taking the facts of the case before me, I find that the fence is adjacent to a highway used by vehicular traffic and therefore it requires planning permission by virtue of Class A of Part 2 of Schedule 2 of the GPDO. In reaching my decision, I am cognisant of the fact that the appellant is separately seeking legal advice in terms of the exact position of the highway. This is a separate legal matter and my decision has been based on the relationship and proximity of the fence with the main road.
8. For the collective reasons outlined above, and as a matter of fact and degree, I conclude that the ground (c) appeals should fail.

### **Appeal on ground (a) and the deemed planning application**

9. The appeal is made on ground (a) of s174 of the Act that planning permission ought to be granted in respect of any breach of planning control which may be constituted by the matters stated in the notice. The main issue in respect of this appeal is the effect of the fence upon the character and appearance of the area.

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<sup>1</sup> Appeal decisions APP/P1133/C/09/2115400 & APP/T0355/C/11/2162054

10. The appeal fence measures approximately 1.8 metres in height, but it appears higher when viewed from Grove Road due to land levels. Public facing areas in the locality are generally characterised by soft landscaping and are either open fronted or have low boundary treatments. This gives the locality a generally open and spacious feel adding positively and distinctively to the character and appearance of the area. In contrast, and owing to the height, position and length of the fencing, it appears incongruous to the passer-by in so far that it detracts from the aforementioned sense of spaciousness and openness. This harm is compounded by the fact that relative to Grove Road, the fence is positioned on ground which is about 0.5 of a metre higher. Consequently, the fence has an overall dominating and intrusive impact when viewed by passers-by.
11. For the reasons outlined above, I conclude that fence causes unacceptable harm to the character and appearance of the area. Therefore, it does not accord with the design aims of Policy CS2 of the adopted Blaby District Local Plan (Core Strategy) Development Plan Document 2013 and saved Policy R1(iii) and (iv) of the Blaby District Local Plan 1999. The appellant has referred me to examples of fences elsewhere which are of a similar height and are also close to highways. I am not sure of the exact circumstances which led to these fences being erected and, in any event, I have considered the appeal fence on its individual planning merits. The existence of the aforementioned fences referred to by the appellant does not alter or outweigh my conclusion on the main issue.

### **Appeals on ground (g)**

12. The appeals on ground (g) are that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
13. The compliance period in the notice is 1 month. The appellant states that a period of 1 month is too short as they are currently investigating land ownership issues with Leicestershire County Council. However, I have concluded that planning permission is required for the fence and have found that it is unacceptable in planning terms. On the evidence that is before me, I am satisfied that a period of 1 month would be sufficient for the purposes of reducing the fence in height to no more than 1 metre in height.
14. For the reasons outlined above, the ground (g) appeal fails.

### **Conclusion**

15. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

*D Hartley*

INSPECTOR