
Appeal Decision

Site visit made on 15 May 2018

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 06 July 2018

Appeal Ref: APP/D0515/C/17/3179042

Land North West of 321 Norwood Road, fronting Smiths Chase, March PE15 8QL

- 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 by Mrs Jennifer Varney against an enforcement notice issued by Fenland District Council.
 - The enforcement notice, ref. ENF/226/16/UW, was issued on 19 May 2017.
 - The breaches of planning control alleged in the notice are:
 - A. the erection of a single-storey 3-bed dwelling not built in accordance with the details as approved by planning permission FNR14/0805/F (boundary treatment), and;
 - B. The erection of a wooden shed.
 - The requirements of the notice are to:
 - i) Remove fences and wall forward of the principle (front) elevation; and
 - ii) Move the shed into the garden so it does not protrude forward of the principle (front) elevation of the dwelling, and;
 - iii) Construct a 0.9m high hoop-topped railing in the position as shown on the approved plan reference: SE-331 10 Rev C referred to by condition 5 of planning permission F/YR14/0805/F.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period, and 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 fall to be considered.
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Decision

1. The appeal is allowed insofar as it relates to Allegation A - the erection of a single-storey 3-bed dwelling not built in accordance with the details as approved by planning permission FNR14/0805/F (boundary treatment) - and the enforcement notice is quashed.

The appeal is dismissed insofar as it relates to Allegation B - the erection of a wooden shed - 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.

Background matters

2. The appeal property lies in a short cul-de-sac off the western side of Norwood Road, and is known as no. 7a Smiths Chase. It is a relatively recently built bungalow following the grant of planning permission in January 2015 (the original permission)¹, subject to later approvals of a non-material amendment, and of proposed details pursuant to conditions 2 and 4 of the original permission². A further planning application for revision of the front parking area and erection of a 1.8 metre high fence was refused in February 2017³. Other buildings in the Close are bungalows and garages of some long standing, set behind largely open frontages.

The appeal on ground (b)

3. This ground is that the alleged breach has not occurred as a matter of fact. The appellant argues that the 2015 planning permission shows 2 parking spaces, and the western part of the site bounded by a 1.8 metre high close-boarded fence, and that this was subsequently modified by the approval of proposed details.
4. The originally approved scheme showed – on drawing no. 10 revision C – an existing 1.8 metre high close-boarded fence along the western part of the site boundary that is approximately parallel with the western elevation of the bungalow. At a point that aligns with the rear wall of the previously existing garage standing slightly to the north of the bungalow the boundary sheers off to the east at an angle of roughly 45°. This follows the line of the edge of the concrete drive serving nos. 6 and 7 Smiths Chase, bungalows to the west of the appeal property. From this point up to the back of the footway the boundary was proposed to be a 0.9 metre high metal loop-topped railing, ending at a point approximately on the line of the western elevation.
5. The details required to be approved under Condition 2 of the original permission were of the on-site parking arrangements. Condition 4 – relating to external facing and roofing materials – is not a matter of concern in this appeal. The approved drawing relating to the on-site parking arrangements – (drawing no. SE-331-25 revision A) – shows the proposed parking spaces, but does not show any fencing or other boundary treatment nor does the approval have any bearing upon boundary treatment. I do not take the drawing approved for the purpose of satisfying condition 2 to indicate any variation from the original intention for the boundary treatment.
6. The boundary scheme that has been carried out does not include the 0.9 metre high loop-topped railing, but a section of fence and a brick wall. No other details have been approved, and in fact planning permission was refused for revision of the front parking area and erection of a 1.8 metre high fence in the February 2017 decision notice. It follows that on the balance of probabilities the alleged breach – that is, that the boundary treatment has not been built in accordance with any approved details of planning permission ref. FNR14/0805/F – has occurred as a matter of fact. The appeal on ground (b) therefore fails.

The appeal on ground (c)

¹ Decision notice ref. F/YR14/0805/F, dated 28 January 2015.

² Decision notice ref. F/YR15/3039/COND, dated 22 May 2015.

³ Decision notice ref. F/YR17/0047/NONMAT, dated 15 February 2017.

7. This ground is that the development is not in breach of planning control. It is argued with respect to the boundary treatment that it is development permitted under the provisions of Class A, Part 2 of Schedule 2 to The Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO), which grants planning permission for '*the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*'. This is subject to a number of preclusions. Of particular relevance in this appeal is paragraph A.1(a)(ii), which states that 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 metre above ground level.
8. The boundary treatment enforced against, comprises the part of the fence standing forward of the principal elevation of no. 7a, and the brick wall forward of that. Article 2 of the (GPDO) interprets a '*private way*' as '*being a highway not maintainable at the public expense and any other way other than a highway*'. This shared drive is clearly not maintainable at public expense, and in my view should be regarded as a private way that is '*other than a highway*'. If this were not the case, planning permission would be required for any fence exceeding 1 metre in height, which ran alongside a private drive. Such a situation cannot be what was envisaged in formulating the GPDO.
9. As to the interpretation of a highway included in section I of GPDO Part 1 - that a '*highway includes an unadopted street or a private way*' - I concur with the appellant's view that this does not apply in the case of development permitted under Part 2. Furthermore, there is nothing in the GPDO that limits the allowances in Class A of Part 2 to development forward of the principal elevation of a dwellinghouse .
10. The height of the wall and fence is somewhat less than the maximum of 2 metres allowable under paragraph A.1(b) of Class A, and on the balance of probabilities I consider the boundary treatment subject of allegation A of the enforcement notice to be development permitted under the provisions of Class A, Part 2 of Schedule 2 to the GPDO. The appeal on ground (c) therefore succeeds insofar as it relates to boundary treatment, and I intend to quash the enforcement notice in this respect. There is therefore no need for me to go on to consider the appeals on grounds (a) and (f) relating to boundary treatment.
11. As regards the wooden shed, this stands between the boundary wall/fence, and another section of timber fence within the appeal site, so that it is partly concealed. The shed is approximately 2.4 metres long and 1.85 metres wide, with a ridge height of about 2.4 metres. The southern face of the structure is more or less on the line of the principal front of the bungalow, so that the opposite face stands about 1.85 metres forward of that line.
12. Class E(a) of Part 1 to Schedule 2 of the GPDO includes an allowance for the provision within the curtilage of a dwellinghouse, amongst other things, any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. Development is not permitted under this class where - under paragraph E.1(c) - any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.
13. I do not question that the shed is required for purposes incidental to the enjoyment of the dwellinghouse as such. However, on the balance of probabilities it is precluded from being permitted development by the fact that

it stands forward of the principal elevation. The appeal on ground (c) fails in this respect, and I intend to uphold that part of the notice accordingly.

The appeal on ground (a) and the deemed planning application

14. This ground is that planning permission should be granted for the matters alleged in the enforcement notice. As noted above, given the success on ground (c) of the appeal relating to boundary treatment, I shall not consider that aspect any further.
15. I consider the main issue in this part of the appeal to be the effect of the garden shed upon the character and appearance of Smiths Chase.
16. The roof of the shed is at a height of about 0.65 metres above the top of the brick boundary wall. The shed is sited in a rather cramped position between the boundary and the section of timber fence within the appeal site. The position of the shed, with the roof projecting above the fences introduces an element of clutter into the street scene.
17. The layout of Smiths Chase has clearly been carefully considered – areas to the fronts of the dwellings are open, with areas of generally well-kept lawns between access drives, and a significant amount of shrub planting, but without boundary fences. In my opinion the clutter introduced by the shed is incongruous and conspicuous in the context of this largely open and attractive residential environment.
18. I conclude on the first main issue that the shed causes significant harm to the character and appearance of Smiths Chase. It does not accord with development plan, particularly with regard to the aims of Policy LP16 of the Fenland District Wide Local Plan of 2014, which seeks to protect high quality environments, and ensure new development makes a positive contribution to the local distinctiveness and character of an area.
19. Representations have been made about the impact of the shed on outlook from dwellings immediately to the west of the appeal site. As noted above the shed and its siting are a conspicuous feature of the area. Nearby bungalows have a clear view of the roof above the boundary wall and fence. In my opinion this is an unsightly intrusion into the outlook from windows of habitable rooms in those dwellings. This adds weight to my conclusions on the main issue.
20. The appellant argues that the shed cannot reasonably be moved to another position without impinging upon the outlook from windows in the appeal premises, and that in any case this would not improve the outlook from nearby dwellings. However, this does not justify causing harm to the street scene at large. While it may be difficult to find a position for the shed in this part of the garden that satisfies the appellant's requirements, I note that there is another area of the garden to the east of the bungalow of a size that might provide a reasonable alternative site.
21. Given my conclusions above, the appeal on ground (a) must fail in relation to the shed. I intend to uphold the enforcement notice in this regard and to refuse planning permission on the deemed planning application.

The appeal on ground (f)

22. This ground is that the steps required by the notice are excessive, and that lesser steps would overcome the Council's objections. Moving the shed to another part of the garden, so that it did not project forward of the principal elevation of the dwelling, is itself the minimum requirement that would result in the structure coming within the allowances of Class E of Part 1 to Schedule 2 of the GPDO. It would then be for the appellant to determine any new position. No other lesser steps have been put forward, and the appeal on ground (f) therefore fails.

Other matters

23. The appellant makes a number of claims concerning the Council's administration of the case, and expenditure from the public purse. These are not matters to be considered as part of the s.174 enforcement appeals regime, and should be addressed in another forum.

Conclusions

24. For the reasons given above I conclude that the appeal should succeed on ground (c) insofar as it relates to Allegation A. Accordingly the enforcement notice will be quashed in that respect. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered. Otherwise I will uphold the notice insofar as it relates to Allegation B, and refuse to grant planning permission on that part.

Stephen Brown

INSPECTOR