



Appeal Decision

Site visit made on 22 July 2019

by Thomas Shields MA DipURP MRTPI

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

Decision date: 24 July 2019

Appeal Ref: APP/Z5060/C/18/3215375
793 Green Lane, Dagenham, RM8 1DD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
 - The appeal is made by Ms Mabel Kaneza against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
 - The enforcement notice was issued on 10 October 2018.
 - The breach of planning control as alleged in the notice is without planning permission, erection of a fence at the rear of the property exceeding two metres in height.
 - The requirements of the notice are:
 1. Lower the fence at the rear of the property to no more than two metres in height
 2. Remove all subsequent waste material from the property
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Act.
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Decision

1. It is directed that the notice be corrected in Section 5 by deleting the word "Lower" and substituting for it instead the words "Remove the fence in its entirety, OR lower".
2. It is directed that the notice be varied in Section 6 by deleting "1 Month" and substituting instead the words "4 months".
3. Subject to the correction and variation the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

4. The enforcement notice requirements are aimed at remedying harm to amenity by requiring that the fence should be lowered in height to 2 metres. However, the appellant might prefer to remove the fence in its entirety and hence the requirements should be worded in a way that provides for such a course of action. I have therefore corrected the notice accordingly to allow the appellant the option of removal of the fence or for its reduction in height.
5. No appeal was made on ground (g). However, given the scale of works that would be involved to comply with the (corrected) requirements, particularly if a contractor would need to be scheduled to undertake the works, I consider that 1 month is too short a period of time for compliance. For these reasons I have therefore varied the notice by increasing the period from 1 month to 4 months.
6. I am satisfied that the above correction and variation of the notice, under section 176(1) of the Act, would not substantially prejudice either party's case.

Background

7. A boundary fence, subject of the enforcement notice, has been erected at the rear of No. 793 Green Lane. Parts of the fence, nearest the house, are of some considerable age and are not affected by the notice.

The appeal on grounds (b) and (c)

8. An appeal on ground (b) is a claim that the matters alleged at Section 3 of the enforcement notice have not occurred as a matter of fact. The appellant must therefore demonstrate that a fence in excess of 2 metres in height has not been constructed. An appeal on ground (c) is a claim that the fence does not constitute a breach of planning control.
9. The burden of proof in appeals on grounds (b) and (c) falls to the appellant, and the test of the evidence is on the balance of probability.
10. During my visit to the appeal site I saw that a continuous fence, subject of the notice, had been erected at the rear of the property separating the appellant's garden from neighbouring gardens. It comprises a number of relatively new timber panels (purchased in June 2018) each being approximately 1.8m x 1.8m. The appellant acknowledges that she erected the fence.
11. The fencing constitutes "development" as defined by section 55 of the Act and so requires planning permission. The appellant's Grounds of Appeal form states that she repaired the fence by erecting 1.8m high fence panels and that these "are within the limits of planning regulations". I take this to be an argument that the fencing benefits from the planning permission, referred to as "permitted development", granted by Article 3 and Class A, Part 2 of Schedule 2 to the GPDO¹.
12. Permitted development under Class A permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. However, the permission has limitations, and of those the limitations at A.1 (b) and (c) are relevant to this case. Class A.1. states that development is not permitted by Class A if -
 - (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;
 - (c) 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.
13. The Council's evidence is that the fencing is 2.80m in height, but as I saw on site that is clearly wrong. The panels are mounted on top of concrete gravel boards so that the overall height of the fence is approximately between 2.06m and 2.08m when measured from immediately adjacent existing ground level on the appellant's property. Existing ground level is taken as the top of the enclosed soil bed along the western side boundary, and the top of the existing paved patio at the bottom of the garden. I therefore conclude, as a matter of fact, that a fence in excess of 2 metres in height has been erected, as alleged in the notice, and the appeal on ground (b) must therefore fail.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015

14. Also, since the fence exceeds 2m above ground level by between 6 to 8 centimetres, and there is no convincing evidence before me to demonstrate that the older pre-existing fence was the same height or greater in height, I find that the fence falls outside of the limitations at Class A. A.1(b) and (c) above and so is not "permitted development". I acknowledge that the fence is only marginally higher than "permitted development" but there is no flexibility or "tolerances" within Class A of the GPDO.
15. Since the development is not "permitted development" and does not benefit from any other planning permission it constitutes a breach of planning control. Therefore, the appeal on ground (c) must also fail.
16. No appeal was made on ground (a) and so the question of whether planning permission ought to be granted is not before me. However, given that the Council issued the enforcement notice on the basis that the fence height was 2.80m above ground level, rather than 2.08m, the extended 4 month period for compliance with the notice would also allow sufficient time for the appellant to submit a planning application to the Council in order to seek planning permission for the development should she wish to do so.
17. For all these reasons, the appeals on grounds (b) and (c) fail.

Thomas Shields

INSPECTOR