
Appeal Decisions

Site visit made on 26 July 2019

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 August 2019

**Appeal Refs: APP/V2635/C/18/3206797, APP/V2635/C/18/3206798
Land at Nulawn, 31 Station Road, Watlington, King's Lynn PE33 0JF**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs Glynis Stratford and Mr Guy Jarvis against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The enforcement notice, numbered 16/00483/UNOPDE, was issued on 25 June 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of fencing above one metre in height where it is adjacent to the highway used by vehicular traffic (which includes any footpath).
 - The requirement of the notice is to reduce the height of the fencing to no more than one metre where it is within two metres on the highway used by vehicular traffic (which includes any footpath).
 - The period for compliance with the requirement is two calendar months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications 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. It is directed that the enforcement notice is corrected in paragraph 5 by the deletion of the words "on the highway" and the substitution of the words "of the highway".
2. Subject to this correction, the appeals are dismissed and the enforcement notice is upheld.

Enforcement Notice

3. There is a minor typographical error in the wording of the requirement that requires correction in order that there is consistency with the description of the alleged breach of planning control. I am satisfied that such a correction would not cause injustice to either the appellants or the local planning authority.
4. No appeal was submitted on ground (e), although in correspondence with the Council the appellants questioned the necessity of serving a copy of the enforcement notice on the mortgage company. The Council responded on the matter direct to the appellants. There is no reason to doubt that the notice was properly served.

Reasons: Grounds of Appeal

Ground (c)

5. In an appeal made on ground (c) the onus is on the appellant to show that there has not been a breach of planning control. This is a legal ground of appeal and therefore the planning merits of the development are not taken into account.
6. The main issue is whether the fencing is development permitted under the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
7. In summary, the GPDO through article 3 grants planning permission for the classes of development described as permitted development in Schedule 2 to the Order, subject to any specified exception, limitation or condition. In Schedule 2, Part 2 Minor Operations, Class A permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. There are limitations on when development is not permitted, as set out in paragraph A.1. Relevant to this appeal, the height of the fence after the carrying out of the development must not exceed 1 metre above ground level if erected adjacent to a highway used by vehicular traffic.
8. Number 31 is a bungalow, with gardens to the front and rear. The property fronts and has vehicular access onto Station Road, a public highway (classified road C52/30) that serves Watlington Station and the village and connects to the wider highway network. A footway is present alongside the carriageway. I conclude that Station Road is a highway used by vehicular traffic.
9. The fence has been erected to the front of the residential property, with a set back from the back edge of the footway. At the entrance to the driveway the fence returns towards the dwelling, with a section of fencing terminating at a close boarded gate of similar height. It is a matter of common ground that the height of the fencing exceeds 1 metre above ground level and I confirmed this on the site visit. The remaining factor for consideration is the position of the fencing and whether the fence is "adjacent to" a highway.
10. "Adjacent to" is not defined by the GPDO. However, in light of case law it is generally accepted that a fence or other means of enclosure does not have to actually abut or touch the edge of the highway to be considered adjacent. It is a matter of fact and degree depending on the circumstances of each case. In that respect the existence in the area of other fences of similar height on property frontages is of little weight.
11. At number 31 the fence clearly has the function of forming a boundary between the highway and the residential property. The set back between the front face of the fence and the highway is very small and is in effect a very narrow strip of flat land. The presence of a row of laurel bushes within the strip is of very little consequence and by all accounts the planting was done after the development was carried out. I conclude as a matter of fact and degree the fencing is adjacent to a highway.
12. Article 3(6) of the GPDO states that the permission granted by Schedule 2 (except for the development categories specified) does not authorise any development that creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such

persons. Whilst representations have been made about the adverse effect of the fencing on visibility, the local planning authority has not raised it as a concern and highway safety is not a reason for issuing the notice. In this context I do not intend to rely on the provision of article 3(6).

13. The effect of the fence on the appearance of the area and whether it is in keeping with other fences that have been erected nearby are not factors relevant to deciding whether the fencing is adjacent to the highway or more broadly whether the development is permitted or not permitted under Part 2 Class A of the GPDO. Such factors, together with the protection of privacy, would be considered in determining a planning application in the event planning permission is not granted by the GDPO.
14. In conclusion, the height of the fencing exceeds 1 metre above ground level and the fence is erected adjacent to a highway used by vehicular traffic. The fencing is not permitted development under the provisions of the GPDO. The appeals on ground (c) are not successful.

Ground (f)

15. The issue in this ground of appeal is whether the requirement of the notice is excessive and whether lesser steps would achieve the purpose of the notice.
16. The local planning authority has not required the fencing to be removed but to be reduced in height so that it does not exceed one metre in height within two metres of the highway. The appellants have proposed planting a hedge in front of the fence and painting the fence.
17. The purpose of the notice is to remedy the injury to amenity, as indicated by the reasons for issuing the notice and the scope of the requirement. The harm to amenity is as a result of the physical presence of a solid structure above one metre in height on a prominent frontage very near to the highway. Painting the fence would not address these features. Planting in front of the structure alone or in combination with painting the fence also would not achieve the purpose of the notice. The planting strip is very narrow and having regard to observations on the site visit, the probability is that planting would be difficult to establish and if it did it would overhang the footway. Furthermore, the requirements must be specified precisely in order to ensure the notice is valid. In this case no details of planting (such as species, plant sizes, spacing, numbers and densities, specification of cultivation) have been provided. No paint colour has been specified.
18. The local planning authority has explained why it was considered prudent to specify within two metres of the highway rather than simply require the height of the fencing to be reduced to one metre. In my view this requirement is not excessive, bearing in mind the alignment of the fence. The offer of the appellants to set back the 2 metre fence with a 1 metre fence in the current position amounts to a new proposal that would need to be resolved with the local planning authority. It would be inappropriate for me to consider such a matter as part of the appeal because compliance with the notice's requirement would be dealt with by the local planning authority.
19. I conclude that the requirement of the notice is not excessive and no lesser steps have been identified to achieve the purpose of the notice. The appeals on ground (f) do not succeed.

Other matters

20. As confirmed by the courts, the expediency of issuing an enforcement notice is not a matter for consideration in an appeal under section 174 of the 1990 Act.
21. The correspondence submitted by the appellants regarding the conduct of the local planning authority has no bearing on my assessment of the grounds of appeal.

Conclusion

22. For the reasons given above the appeals should not succeed.

Diane Lewis

Inspector