
Appeal Decision

Site visit made on 16 August 2019

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 22 August 2019

Appeal Ref: APP/C4615/C/18/3215870

Land at S & R Construction Ltd, Premier Industrial Estate, The Leys, Brockmoor, Brierly Hill, DY5 3UP

- 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 Steven Sankey against an enforcement notice issued by Dudley Metropolitan Borough Council.
 - The enforcement notice was issued on 2 October 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, and within the last four years, the erection of a boundary treatment which exceeds 2 metres in height.
 - The requirements of the notice are: Take down the unauthorised fencing in its entirety and remove it from the Land.
 - The period for compliance with the requirements is: One month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by deleting the words "Without planning permission, and within the last four years, the erection of a boundary treatment which exceeds 2 metres in height" under section 3 and replacing them with "the erection of fencing". Subject to this correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of fencing at S & R Construction Ltd, Premier Industrial Estate, The Leys, Brockmoor, Brierly Hill, DY5 3UP as shown on the plan attached to the notice.

The Allegation

2. Although the description given to the alleged breach of planning control in the notice is not substantially incorrect, the reference to 'boundary treatment' does not in my view capture the actual act of operational development that the notice seeks to attack. The notice requires fencing to be removed and it is clear from the submitted evidence that both parties recognise that what has happened is the erection of fencing. To tie in with the notice's requirement, the appeal evidence and to properly identify the act of development, I have corrected the notice as set out above. No party has been prejudiced by this minor correction given the background I have considered.

Main Issue

3. The appeal site lies adjacent to, but outside of the designated Green Belt. Consequently, Green Belt policy and the associated concepts of inappropriate development and openness do not apply in this case. Nevertheless, I shall consider the effect of the fencing on the character and appearance of the area, having regard to how it may affect the openness of the area generally and the setting of the Buckpool Local Nature Reserve which is identified as a Site of Importance for Nature Conservation (SINC).

Reasons

4. The appeal fencing sits inside an existing roughly 2m high steel palisade perimeter fence typically found on industrial estates. The main 3m to 3.5m high vertical element of the fence is also comprised of profiled metal sheeting from which many factory buildings are constructed. The Council does not object to this part of the fence which wraps around the northwest corner of the site. Against this background I agree. The Council's concern is the additional 1.5m height created by the section that is angled in towards the storage yard to create a 'stadium roof' effect.
5. Between the public footpath in the nature reserve alongside the west boundary of the appeal site there is a relatively dense band of trees and vegetation. From the first part of the path closest to the yard there are already some limited views of the existing tall metal building in the southwest corner of the site and items of open storage. The scene is typical of an interface between industrial premises and an undeveloped green space. From here the appeal fence is hardly visible and it does not look out of place given the presence of the existing building and storage.
6. Closer towards the appeal fence the band of trees widens and the footpath level falls away significantly. Views of the fence are therefore from further away and up a steep slope through woodland. From this lower position and the angle of view, the extra stadium roof element is not apparent. Thus, the fence appears as a roughly 3-3.5m high structure. Consequently, despite the appeal site's elevated position, the fence is not prominent or an oppressive feature. I walked several of the paths that weave around in the nature reserve towards the general direction of the back corner of the site, but the fence was not readily noticeable due to the dense leaf cover. When the trees are not out in leaf the screening effect may well be less. However, the vegetation would still be generally dense and overgrown and even if the fence could be glimpsed, its height would not have an unacceptable presence for the reasons given.
7. From the canal towpath at the edge of the nature reserve the trees are tall and dense. Due to these and the siting of the fence away from the canal, it is not visible. Closer to where the industrial land meets the towpath, in the vicinity of a canal lock, the tree cover is much less. However, I also could not see the fence from there due to its setback position and the scene changes anyway as it gives way to a more developed appearance with concrete panel fences and brick walls, and several large industrial style buildings that are probably equivalent to and, in some cases, taller than the fence. The fence would not look out of place in this context even if it could be seen from further away on this side of the industrial estate or the other side of the canal.

8. From further afield, such as from Chelford Crescent, there are some limited views of the fence on its higher ground position. Nevertheless, in front of the fence there is a row of mature and very tall trees that are much higher than the fence. They do not totally obscure views of the fence, but they soften its presence notably. From this road the fence is also quite a distance away at about 170m and the field of view is wide. It incorporates the houses in the road and the expanse of other trees in the nature reserve leading up to the industrial estate. In this context, despite the overall length of the fence, the 'extra' 1.5m above the height of the fence which the Council finds acceptable, it is not as an imposing barrier. It has a negligible enclosing effect and it does not materially harm the visual setting of the nature reserve.
9. I appreciate the history of enforcement investigations associated with this development, which includes a refused planning application to retain the fencing. However, I find that the fencing does not harm the character and appearance of the area, having regard to the openness of the area generally and the setting of the Buckpool Local Nature Reserve. Therefore, the development carried out accords with the aims of policies S6 and S19 from the Dudley Borough Development Strategy (2017) as they relate to seeking urban design that is appropriate to and responsive to the character and/or visual amenities of the area, and that safeguards the functions of the Borough's green network. I have not referred to policy S23 from the Development Strategy as that relates to development in the Green Belt. That is not relevant here for the reasons already set out. I also find no conflict with the design and conserving the natural environment aims of the National Planning Policy Framework.

Conclusion

10. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected.

Gareth Symons

INSPECTOR