

Appeal Decision

Site visit made on 23 September 2019

by John Whalley

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

Decision date: 30 September 2019

Appeal ref: APP/B3030/C/19/3222500

Belle Vue House, Belle Vue Lane, Blidworth NG21 0SF

- The appeal is made by Mr John Cooper under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Newark and Sherwood District Council.
- The notice was issued on 14 January 2019; reference 18/00190/ENF.
- The breach of planning control was: Development consisting of the erection of a gate and fence (means of enclosure) along the front/southern boundary, as shown on photographs 1 & 2, and the erection of a structure forward of the principal elevation of the dwellinghouse, as shown in photograph 3 and marked 'X' on Plan A.
- The requirements of the notice are:
 - A. Reduce to a height of no more than 1 metre above ground level, the gates, fence and any other means of enclosure along the front/southern boundary, as shown on photographs 1 & 2.
 - B. Remove from the land the structure as shown in photograph 2 and marked 'X' on Plan A.
- The period for compliance with the requirements is 90 days.
- The appeal was made on grounds (a), (c) and (f). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of decision: The appeal is dismissed and the enforcement notice upheld

Appeal site and surroundings

1. The appeal site consists of the detached house and its deep front garden at Belle Vue House, Belle Vue Lane, Blidworth. Belle Vue House is bounded to the north and west by industrial units. There is a short terrace of 3 recently built houses to the east fronting a small open courtyard. There is also housing opposite along Belle Vue Lane and in The Crescent to the south.

The appeal on ground (c)

2. An appeal on ground (c) says there has not been a breach of planning control. The enforcement notice alleges 2 breaches of planning control; the

erection of a front boundary fence to Belle Vue House and the siting of the small shed immediately inside the curtilage behind the new fence.

3. Section 55(1) of the Act says: "*Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*".
4. Article 3, Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015, (the Order), allows the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, subject to limitations. Development is not permitted by the Order where the 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 a height of one metre, (A.1(a)(ii)). Limitation A.1(c) says that development is not permitted if: "*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.*". In my view, the erection of the 1.8m high appeal fence and the gates at the frontage of Belle Vue House amounted to development not permitted by the Order.
5. Mr Cooper, the Appellant, said the appeal shed was a movable pre-fabricated structure without foundations. Based upon its size, type of construction, degree of permanence and physical attachment to the ground, it did not constitute operational development.
6. Part 1 to Schedule 2 at Class E(a), of the Order permits the provision within the curtilage of a dwellinghouse "*any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure;...*". However, limitation E.1(c) says development is not permitted by Class E if "*any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;*". The siting of the appeal structure is clearly well forward of the Belle Vue House principal elevation.
7. The Courts have considered whether items on land were chattels or structures that amounted to development of the land. In the case of *R. (on the application of Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin), it was held that the Council had taken too narrow an approach to the meaning of development in s.55 of the Act. A "building" in s.336(1) of the 1990 Act includes "any structure or erection". In the earlier case of *Skerrits of Nottingham v Secretary of State for the Environment, Transport and the Regions* [2000] 2 PLR 102, structures which would not ordinarily be described as buildings could be included. There, it was held that siting a marquee on land for an 8 month period amounted to the erection of a building. In *Hall Hunter v First Secretary of State* [2007] 2 P&CR. 5 the erection of polytunnels was also held to be the erection of a building. In *Barvis Ltd v Secretary of State for*

the Environment (1971) 22 P & CR 710, a tower crane on a steel track was held to be a “structure” or “erection” and thus a “building”, even though it was moved around the site and later dismantled and removed to another site.

8. In my view, the above cases indicate that the determination here as to whether the small shed in front of Belle Vue House was a ‘building’ and whether its siting was of sufficient permanence as to be regarded as development within the meaning of s.55, is a matter of fact and degree. Although the present appeal shed is not substantial, there was no indication it was to be removed or moved elsewhere. In *Skerritts*, Schiemann LJ said of permanence: “in situ for how long, to which I would answer: for a sufficient length of time to be of significance in the planning context”. For the polytunnels in *Hall Hunter* to remain in one particular location for 3 months was found by the Inspector to be sufficient to be of consequence in the planning context. In that case, the Judge said the units were permanently in their field, and there was no limit on the length of time they would remain there – they could be there for years. The ability to move them around the field did not remove the significance of their presence in planning terms. There was no indication here of an intention to move or remove the appeal shed. I consider its erection and siting to have been significant enough to have required planning permission. The appeal on ground (c) fails.

The appeal on ground (a)

9. The enforcement notice sets out two objections to the retention of the fence and gates. First, because of the height of the fence, the visibility available to drivers of vehicles entering Belle Vue Lane from the appeal property was said to be inadequate. Secondly, the Council considered that the size, siting and design of the fence and gates made it a discordant feature in the street scene. The fencing and gates did not respect the character of the site or the locality. That was contrary to Core Policy 9 and policy DM5 (Design) and to policy DM6 – (Householder Developments) of the Newark and Sherwood Amended Core Strategy DPD, (Development Plan Document). Policy DM5 says new development is to achieve a high standard of sustainable design and layout that is of an appropriate form and scale to its context, complementing the existing build and landscape environments.
10. I find no sound justification for the stated first reason for issuing the enforcement notice. The Council did not pursue this objection in their appeal statement. Visibility for vehicle drivers emerging from Belle Vue House on to Belle Vue Lane is adequate. Because of the 2m or so width of the fronting verge/footway, visibility along Belle Vue Lane is not reduced to below a safe distance by the appeal fencing. The decision then turns on the acceptability or otherwise of the appearance of the new fence and gates and the small shed in the street scene.
11. The somewhat forbidding and grim look of the 1.8m or so high solid fencing and gates has been exacerbated by use of a dark paint finish. To some extent, in view of Mr Cooper’s concerns about his family’s need for additional security, that look might be deliberate. As Mr Cooper pointed out, there is some similar fencing nearby, especially notable being that to the Belle Vue Lane side of the end house in The Crescent. There is also industrial fencing

fronting commercial sites to the west of Belle Vue House. Mostly, however, walls and fencing to the frontages and front gardens of houses in the immediate area is low, or even absent, as seen next door to the east. I consider that, notwithstanding the perceived and understandable security needs of the property, the somewhat uncompromising looking and discordant appeal fencing and gates fail to comply with local policy guidance aimed at achieving a high standard of sustainable design that fits in with the mainly residential character of the immediate area. Planning permission is not granted to retain the appeal fencing and gates. Neither is planning permission granted to retain the small shed close to the fence. Although the shed is well screened from public view by the present high fencing, it would become an odd looking and intrusive feature when the fencing and gates are lowered to no more than 1m high. The appeal on ground (a) fails.

The appeal on ground (f)

12. An appeal on ground (f) says the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the Council's enforcement notice seeks to remedy the harm to amenity caused by the discordant appearance of the appeal fencing, gates and shed.
13. Mr Cooper said the previous garden front fence was 1.4m high. He said the Order, at Schedule 2, Part 2, Class A.1(c)), allowed for the erection of a fence unless "the height of any 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". If the enforcement notice was upheld, the requirement should be that the fence be lowered to no less than the earlier 1.4m high, not 1m high as set out in the notice. However, the appeal fence and gates are new. Their erection was not the maintenance or improvement or the alteration of the former fence. Any lawful rights attached to the former fence were lost when it was removed. The only relevance of the former fence might be of the planning merits of a visual comparison of the old and new fence. There is no lawful right to erect a new 1.4m high fence or to reduce what has been built to a height of no more than 1.4m. Whilst any reduction in the height of the appeal fencing and gates would be an improvement, I consider that the notice's requirement to lower its height to that which would be permitted by the Order is reasonable and necessary to minimise the harm to visual amenity caused by the appeal fencing and gates to the frontage of Belle Vue House.
14. As Mr Cooper said, the small shed just inside the fronting fence is quite well hidden from public view as its roof is scarcely higher than the fence. But, as the Council also pointed out, reducing the height of the fence to no more than 1m high would leave the shed incongruously visible and ill situated just behind the fence. I consider the requirement that the shed should be removed to be apt and reasonable.
15. Mr Cooper's fears that upholding the requirement to remove the shed would also remove any rights to site the shed behind the front elevation of the house were unfounded. The long established principle derived from the case of *Mansi v Elstree RDC [1964] 16 P and CR 154* is that an enforcement notice

cannot lawfully take away such planning rights as may remain to the land after compliance.

16. The appeal on ground (f) fails.

FORMAL DECISION

17. 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 for the development already carried out, namely the erection of fencing, gates and a shed on the southern boundary of the land at Belle Vue House, Belle Vue Lane, Blidworth NG21 0SF.

John Whalley

INSPECTOR