
Appeal Decisions

Site visit made on 2 October 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2019

Appeal Refs: APP/R0660/C/19/3222647, APP R0660/C/19/3222648 and APP/R0660/C/19/3222649

17 Town Lane, Mobberley WA16 7PY

- 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 Mr David Williams, Mr William Williams and Mrs Carol Williams against an enforcement notice issued by Cheshire East Council.
- The enforcement notice was issued on 11 January 2019.
- The breach of planning control as alleged in the notice is the erection of fencing over 1 metre in height adjacent to a highway.
- The requirements of the notice are:
 - a) Remove the length of fencing in its entirety between points A to B and C to D shown on the attached plan marked 'Plan B'. The distance between points A to B, and C to D is 2 metres.
 - Or
 - b) Reduce the height of the fencing between points A to B, and C to D shown on the attached plan marked 'Plan B' to a height no greater than 1 metre. The distance between points A to B, and C to D is 2 metres.
 - c) Remove from the land all resultant material and debris.
- The period for compliance with the requirements is:
 - a) 2 months
 - b) 2 months
 - c) 2 months
- The appeals are proceeding on the ground set out in section 174(2) (c) 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.

Summary of Decisions: The appeals are dismissed and the enforcement notice upheld.

The Appeals on Ground (c)

1. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The erection of the fences comprises operational development within the meaning of the Act for which planning permission is required.
2. The appellants contend that the fencing in question is not adjacent to the highway because it runs alongside the perimeter of the property and is adjacent to a passageway used for pedestrians only on one side; and adjacent to the neighbouring hedge on the other side. Schedule 2 Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) relates to minor operations comprising gates, fence, walls etc.

Permitted development is the erection of a gate, fence, wall or other means of enclosure. The GPDO goes on to state that development is not permitted if the height of any fence 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.

3. The appellants argue that the only part of the fence that could conceivably be considered as adjacent to the highway is one face of the fence post, measuring some 14 centimetres wide, and which is next to the footpath. The appellant also states that there is nothing in the GPDO which stipulates a particular distance from the highway with respect to adjacency. That may be the case, but in my mind, there is no doubt that the fencing in question is immediately adjacent to the highway as a matter of fact in that it, in the plain meaning of the word, it adjoins part of the highway. Although the fencing does not run alongside the frontage boundary of the property with the highway, parts of the fencing have been erected immediately adjacent to the highway
4. The appellants also argue that case law¹ stipulates that 1 metre away from the highway is the accepted rule, where it was held that a fence higher than 1 metre and less than 1 metre from the footway be set back from the site boundary and pavement by just 1 metre. However, I have noted that the particular case referred to relates to Class II of the 1977 General Development Order which used the words "abutting a highway" rather than "adjacent to a highway". Furthermore, that case related to a particular set of circumstances where a fence was set back from the road behind a stone wall and some poplar trees. The High Court transcript is also clear that the Judge did not want to say anything which could be understood to lay down any general rule as to the meaning of 'abut', as in each case it is a question of fact.
5. I have also taken account of the appellants' comments that their neighbour has no objection to the fence, their views that the fencing creates no hazard to vehicular traffic and that compliance with the requirements of the enforcement notice would create an eyesore and serve no useful purpose. However, those matters are not relevant to the determination of an appeal on ground (c), but rather would be arguments that may be presented with appeals on ground (a). There are no appeals on ground (a).
6. The appeals on ground (c) fail.

Conclusion

7. For the above reasons I conclude that the appeals should not succeed.

Formal Decisions

8. The appeal is dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR

¹ Simmonds v SSE & Rochdale MBC