



Appeal Decision

Site visit made on 11 November 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 05 December 2019

Appeal Ref: APP/V2004/C/19/3228603

78 Alderidge Avenue, Kingston upon Hull HU5 4EQ

- 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 Miss Alison Partridge against an enforcement notice issued by Kingston-upon-Hull City Council.
 - The enforcement notice was issued on 8 April 2019.
 - The breach of planning control as alleged in the notice is "Without planning permission, the erection of a fence over 2 metres in height at the southern boundary with 38 to 42 Kirkham Drive".
 - The requirements of the notice are to "Reduce the height of the fence to a maximum of 2 metres from ground level along the southern boundary of the premises between points marked 'A' and 'B' on the attached plan.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended ('the 1990 Act').
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Decision

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

Preliminary Matters

2. A representative from the Council did not attend the pre-arranged site visit at which I was due to be accompanied by the parties. The Council having confirmed that it was content for me to proceed in the absence of its representative, I observed the site and surroundings having been given access to the site by the appellant.
3. The Council's reasons for issuing the notice include that it is (in the Council's view) over dominant, reduces natural light, restricts views and creates a sense of overshadowing. The appellant has dealt in detail with these concerns in her appeal documents, and advances the merits of the fence. However, there is no appeal brought on the ground set out in section 174(2)(a) of the 1990 Act, which is that planning permission should be granted for the matters stated in the notice. This precludes me from considering the planning merits of the fence. It also means I am unable to take into account the safety and security benefits of the fence to the appellant and her family.
4. The appellant also takes issue with the Council's decision to issue the notice because it considered it 'expedient' to do so, and she notes that a dictionary definition of an expedient action may include one that is not morally right. Whether I consider it expedient for the Council to have taken enforcement action is not a matter for consideration in this appeal. However, it is the

language used by the 1990 Act: section 172(1) provides that a local planning authority may take enforcement action only when it is considered it 'expedient' to do so, when it appears to them that there has been a breach of planning control.

Ground (b) – that the matters have not occurred

5. The appeal is made under ground (b), which is that the matters stated in the notice as constituting the alleged breach of planning control have not occurred. The Council's notice alleges the erection of a fence to a height exceeding 2 metres above ground level. At my site visit I saw that the rear garden of the property is bounded by fencing on its 3 sides. The Council's notice is expressly directed to a fence at the southern boundary, which is the middle section of fencing. The southern boundary fence exceeds 2 metres in height. At some point, a fence has been constructed that presently results in the fence described by the Council's notice.
6. The Council has submitted a number of photographs showing the view from the neighbouring garden at No 76. These encompass views of part of the appeal site in the location where the fence is. A pebble-dashed outbuilding in the garden of No 40 Kirkham Drive, to the south of the site, is visible on some of these photographs, shown to the left of the westernmost outbuilding in the garden of the appeal site. The photographs on which it is visible are dated 21 November 2017 and 20 July 2018. A later photograph, dated 4 December 2018, shows the building to have become obscured by an intervening fence – the fence that is the subject of the notice. At the time of my site visit I observed that the rear of the outbuilding to No 40 stood at around the same height as the fence that is the subject of this appeal.
7. The appellant explains that the fence has been the subject of several repairs over the years. She asserts that at the time of the earlier photographs, the fence is not visible in the photographs because during the time these were taken it was leant against the back of her garden buildings and wedged to stop further damage to the rest of the fence. She describes having repaired and maintained the fence over the last 12 years with damaged panels and posts being replaced when needed. Severe storm damage resulted in repairs being undertaken in late 2018 which included replacing a fence post in the corner adjoining No 76. The appellant refers to 3 panels and a new post. She describes having dug out some soil to install the new gravel boards.
8. At the time of my site visit I observed the whole of the rear fence to be of relatively new appearance. Bare earth was visible on each side of the fence. Concrete gravel boards of new appearance sit between concrete fence posts, with several close boarded wooden panels above the gravel boards. The fence as a whole has a uniform appearance, with no elements of it appearing particularly newer or older than others.
9. In order for the ground (b) appeal to succeed, the appellant would need to satisfy me, on the balance of probabilities, that the matters alleged in the notice have not occurred. The appellant does not detail the precise scope of the recent works, and in the face of what is apparently an altogether new fence, I am unable to find that the appellant has discharged this burden of proof. As a matter of fact and degree, and on the balance of probabilities, I find that the matters alleged in the notice have occurred as a matter of fact. The ground (b) appeal accordingly fails.

Other grounds

10. Although the appellant says that the fence has been in situ for some 12 years, I have found that the works undertaken have amounted to the erection of a new fence for which planning permission is necessary. The quotation taken from the planning portal that permission is not required to alter, maintain or improve an existing fence if its height is not increased does not apply to the erection of a new fence. Therefore I am unable to find that the appeal should succeed on any other ground.

Conclusion

11. For the above reasons, the appeal is dismissed and the enforcement notice is upheld.

Laura Renaudon

INSPECTOR