
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/19/3224181

38 Duddon Grove, Kingston upon Hull HU8 9NX

- 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 Mrs Linda Johnson against an enforcement notice issued by Kingston-upon-Hull City Council.
 - The enforcement notice, numbered 18/00211/FENCES, was issued on 25 January 2019.
 - The breach of planning control as alleged in the notice is "Without planning permission, the erection of a wooden fence over 1 metre in height to the front (south facing) boundary of the premises, facing a highway used by vehicles".
 - The requirements of the notice are to "Lower the height of the wooden fence to no more than 1 metre above ground level".
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. 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.

Preliminary Matters

2. A previous planning application was refused by the Council for the development that is now the subject of the enforcement notice on 19 October 2018 under reference 18/01076/FULL. When considering that application, the Council determined that a fee exemption arose under Regulation 4 of the Town and Country Planning (Fees, etc.) Regulations of 2012 ('the Fees Regulations'). By reason of Regulation 9 of the Fees Regulations, no fee is payable for the deemed planning application in this appeal.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issue

3. The main issue arising in the appeal is the effect of the fence on the character and appearance of the appeal site and the surrounding area.

Reasons

4. 38 Duddon Grove is a semi-detached south facing dwelling lying adjacent to an area of open land on the Longhill Estate to the north east of Hull. It benefits

from front and rear gardens, and at the time of my site visit I saw that high wooden boundary treatment surrounded the property's eastern and southern sides, and the front western boundary separating the property from its attached neighbour at No 40. Immediately in front of this wooden boundary treatment, the southern front boundary of the site is marked by a fence and gates consisting of a mix of a concrete lower section of part, and metal railings for the remainder, around 2m in height.

5. The tall wooden boundary treatment all around the modest front garden significantly encloses the property at close quarters, resulting in a somewhat hostile appearance. Elsewhere in the area, front boundary treatments are not uniform but mostly constitute fences and walls of around 1m in height. There are exceptions, as the appellant points out. Other high fences or walls mostly enclose the sides and rears of domestic properties. Some also enclose front gardens, such as on Waveney Road, although mostly these surround larger properties that do not have the effect of so severely enclosing those dwellings.
6. The estate in the immediate vicinity of No 38 has an open character, with a large area of open space immediately to the east of the dwelling and another smaller area across Waveney Road to the south west, and with domestic boundary treatments mainly consisting of low hedges and picket fences. Although the property at No 38 has previously been enclosed to the front by the concrete fence with metal railings and gates above and to the side, I nonetheless find that the erection of a tall close boarded wooden fence to be significantly at odds with the prevailing character of the area.
7. Policy 14 of the Hull Local Plan 2016 – 2032, adopted in November 2017, ('the Local Plan') has as its design objective the delivery of a high quality environment in the city, including with regard to the relationship between new development and local character. Because of its incongruous appearance in this area of generally open character, the fence is contrary to this policy, and thus with the development plan for the area.
8. The appellant raises a number of other considerations in support of a grant of planning permission. I have referred above to other tall fences and enclosures in the area to which the appellant has drawn my attention. These have not resulted in a change to the prevailing open character of the area such that the fence at the appeal site is in keeping with it, and so the existence of these other fences does not justify granting permission in this case. The appellant also raises a number of matters that engage duties under the Equality Act 2010 and the Crime and Disorder Act 1998.
9. The Council, by confirming the application fee exemption, accept that the fence is designed to achieve some or all of the matters set out in Regulation 4 of the Fees Regulations, and the appellant explains that the enclosure of the front garden results in a place of relaxation, and contends that the fence is necessary on health grounds.
10. I have therefore had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Advancing equality of opportunity can include taking steps to reduce disadvantages and to meet the particular needs of persons with protected characteristics. These may

in some circumstances amount to material planning considerations weighing against the development plan.

11. However, I do not consider that the close-boarded fence enclosure is reasonably required in order to meet the particular needs of the appellant or her family members, or that the advantages it provides cannot reasonably be met in some other way. In this I am mindful that the property benefits from a substantial enclosed rear garden which would be available for relaxation. I am therefore unconvinced that the fence is reasonably necessary in order to advance the interests of persons with protected characteristics.
12. The appellant also contends that the fence is necessary to deter crime, with thefts having previously occurred. Without the wooden fence, other security measures such as the pre-existing metal railings and the CCTV attached to the front of the house would remain. Nonetheless, items in the front garden would be visible from the public realm and so I accept that the fence may provide some benefits in this respect. However, it prevents the natural surveillance generally found in conventional housing layouts, such as here, where houses with relatively short front gardens face the street. Overall I do not consider that the anti-crime benefits of the fence outweigh the harm it causes to the local character of the area, or therefore that it is reasonably required for this purpose.
13. For these reasons I have not found that the benefits of the fence outweigh the harm that it causes to local interests, and I therefore conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Laura Renaudon

INSPECTOR