
Appeal Decision

Site visit made on 29 October 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2019

Appeal Ref: APP/C3620/C/19/3224427

Redleaf, Horley Road, Charlwood, Horley, Surrey RH6 0BJ

- 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 Caroline Higgins against an enforcement notice issued by Mole Valley District Council.
 - The enforcement notice, numbered 2018/0052/ENF, was issued on 5 February 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a two metre high close boarded fence, adjacent to the highway used for vehicular traffic, (the approximate position is marked by a blue line on the attached plan).
 - The requirements of the notice are:
 1. Either
 - a) Remove entirely from the Land the close boarded fence
 - or
 - b) Reduce the height of the close boarded fence so that it does not exceed 1 metre in height at any point when measured from natural ground level.
 - And
 2. Remove from the Land all debris resulting from complying with Step 1.
 - The period for compliance with the requirements is three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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This decision is issued in accordance with Section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 20 November 2019.

Decision

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

Preliminary Matters

2. The Council and appellant both supplied copies of the enforcement notice. That supplied by the Council has a plan attached showing a red line around the property, with a blue line at the front. That supplied by the appellant has a plan attached with the approximate location of fence marked with a red line. I checked with the parties which plan was supplied with the notice and they have confirmed the plan supplied by the Council was that included with the notice. Whilst I note there is some dispute as to its accuracy by the appellant, it does reflect the land affected and the breach of planning control described in the notice. These state that the land affected is edged red and the approximate position of the fence is marked by a blue line on the plan.

The Appeal on Ground (c)

3. An appeal on this ground is that “those matters” (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
4. Redleaf comprises a bungalow behind a front garden mainly laid to gravel with a grass verge, including ditch, between the front of the garden and the pavement adjacent to the vehicle carriageway. A fence has been constructed that is 2 metres in height and located to the rear of the wall with picket fence above that forms the boundary of the property with the verge.
5. There is no dispute that the fence constitutes development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for the fence.
6. The appellant suggests that the fence benefits from the planning permission available within Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This states that fences constructed adjacent to a highway used by vehicular traffic must not exceed 1 metre above ground level. If they are away from the highway, they must not exceed 2 metres above ground level. The issue in this case is whether the fence is located adjacent to the highway.
7. The appellant suggests that the fence is located some distance back from the pavement and vehicle carriageway. However, the term “adjacent” is not defined in the GPDO or in the Act. The Council have drawn my attention to the dictionary definition as being near or next to something else. There is no set minimum distance from the highway where a fence would no longer be “adjacent” to it; it is a matter of judgement, and of fact and degree in each case, as to whether a fence is “adjacent” to the highway.
8. The fence at Redleaf is only separated from the back edge of the pavement by the narrow verge, ditch and wall. Whilst separate structures, when viewed from the road, the fence and wall together are perceived to form the boundary of the property with the highway. As a matter of fact and degree, therefore, I find the fence is “adjacent” to the highway. As such, it does not benefit from the planning permission within the GPDO and hence constitutes a breach of planning control.
9. For these reasons, I conclude that the appeal under ground (c) should fail.

AJ Steen

INSPECTOR