



Appeal Decision

Site visit made on 6 January 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

Appeal Ref: APP/T1410/C/19/3228980

Land at 26 Mountbatten Drive, Eastbourne BN25 6AX

- 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 Mr John Parker against an enforcement notice issued by Eastbourne Borough Council.
 - The enforcement notice, numbered PC/190834, was issued on 29 April 2019.
 - The breach of planning control as alleged in the notice is the erection of a fence adjacent to the highway which is more than one metre in height.
 - The requirements of the notice are:
 - (i) Remove the fence erected adjacent to the highway;
 - (ii) Ensure all waste from the development is disposed of in the proper manner.
 - The period for compliance with the requirements is 12 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Procedural matter

2. The appellant has indicated that only part of the fence lies adjacent to the highway although, no appeal under ground (c) has been pleaded. However, I have no evidence before me, to suggest that the fence was not constructed as a single operation. This being the case, I consider that it is the fence in its entirety, that requires planning permission. I have therefore dealt with the appeal on this basis.

Background and main issue

3. I note that since the enforcement notice was issued, a regularising planning application was submitted to the Council (PC/190648) to retain the fence. This application was refused on 22 October 2019. I have had regard to this decision and the Council's reasons for issuing the notice. I therefore consider that the main issue is the effect of the development on the character and appearance of the area.

Reasons

4. The appeal site is a single storey dwellinghouse sited on the corner of Mountbatten Drive and Beatty Road. The immediate area comprises detached

bungalows of similar scale and design, set within small front gardens. The frontages of the bungalows are characterised by generally low boundary walls giving an attractive open appearance to the area. From the evidence I have before me, prior to the construction of the fence, the appeal site followed this general pattern of development, contributing to the open and spacious character of the area, on this important corner plot.

5. It was clear from my site visit, that the fence exceeds one metre in height and has been constructed immediately behind the low brick wall that marks the boundary. It is of timber construction and surrounds the front garden of the site. To my mind it has an enclosing effect, obscuring views of the bungalow and the garden. Rather than providing screening, the siting of the fence behind the original brick wall, draws attention to its existence. This is particularly apparent when travelling south east down Mountbatten Drive towards Beatty Road.
6. I acknowledge that the fence has been provided to give some privacy and security for the owner's pets. However, the height and design of the fence, together with the materials used and its proximity to the highway, results in an overly stark, dominant and incongruous feature, that is significantly at odds with the open and spacious character of the surrounding area.
7. For the above reasons, I find that the development significantly harms the open and spacious, character and appearance of the area, due to its height materials and design. It therefore conflicts with Policy D10a of Eastbourne Core Strategy Local Plan (2013) (the CS), and saved policies UHT1 and UHT4 of the Eastbourne Borough Plan (2001-2011) (2007). These policies when taken together, seek to ensure that new development makes a positive contribution to the appearance and context of the townscape, by harmonising, respecting, preserving or enhancing local character and distinctiveness.
8. I note the appellant's concern about the relevance of Policy DA10 of the CS to this appeal. Both the reasons for issuing the notice and the decision to refuse planning permission, refer to Policy D10a of the CS. I acknowledge that this may be a typing error on the part of the appellant. Nonetheless, I have considered this policy in the context of this appeal. Whilst I acknowledge that the site does not lie within a conservation area or affect any listed buildings, I consider that this design based policy is relevant to the determination of this appeal.

Other matters

9. My attention has been drawn to other examples of similar boundary treatments in the area and observed several of these at my visit. I do not have any information about the relevant planning history or circumstances for these sites. From my observations, some appear to integrate more successfully than others. In any event, I have to determine this appeal on its own planning merits, and their presence would not justify granting this appeal. Overall, I consider that granting a further inappropriate boundary treatment, would further erode the sense of space and cohesion of the area.
10. I note the appellant's concerns that it has taken some time for the Council to serve the enforcement notice. S172(1)(b) empowers a Council, as the local planning authority, to issue an enforcement notice, when it appears to them that there has been a breach of planning control and they consider it

expedient, having regard to the provisions of the development plan and other material considerations.

11. This is a discretionary power and it is for the Council to decide whether it is expedient and proportionate to issue a notice. I am satisfied that in this instance, there was a breach of planning control and the Council's decision to exercise their discretionary powers to issue the enforcement notice in April 2019, and some time after the breach was first identified, did not amount to acceptance of the unauthorised development, or fetter their right to issue the notice.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR