
Appeal Decision

Site visit made on 26 November 2019

by Roy Curnow MA BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2020

Appeal Ref: APP/G1250/C/19/3224908

13 Southbourne Coast Road, Bournemouth, BH6 4BG

- 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 Kevan Smith against an enforcement notice issued by Bournemouth Borough Council ('the Notice').
 - The enforcement notice, numbered PTR/SAB/C/2017/6429, was issued on 18 February 2019.
 - The breach of planning control as alleged in the notice is without planning permission, erection of a side boundary fence (shown red on plan) and fencing over south-facing gates (shown blue on plan).
 - The requirements of the notice are reduce the side boundary fence to no more than 2 metres in height when measured from the ground on which it is erected and remove the fencing from over the gates.
 - The period for compliance with the requirements is 2 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

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

Preliminary Matter

2. Arguments relating to the planning merits of the development that has been undertaken can only be assessed in an appeal made on ground (a). As the fee was not paid for the ground (a) appeal within the prescribed timeframe, this lapsed and the planning merits arguments put forward in the appellant's case have played no part in my decision.

Ground (f)

3. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control. The boundary fence referred to in the Notice consists of a vertically set close-boarding on top of a horizontal board at ground level. It was measured by the parties at my site visit and has an overall height of 2.6m. The fence above the gateway, which runs at ninety degrees to the boundary fence and links it to the dwelling, was a little higher than this.

4. Permitted development rights¹ allow for the erection of fences or other means of enclosure up to 2m in height, without the need to apply for planning permission. In essence, the requirements of the Notice would result in compliance with this permitted development right, which the Council feels would remedy the harm caused that is defined in the reasons for the Notice.
5. The appellant argues that it would suffice for the fence that has been erected above the south-facing gate to be reduced in height to the same height as the boundary fence. Reducing the height of the fence above the gate to match that of the boundary fence would not remedy the breach of planning control. This would result in the boundary fence, which causes harm to amenity, remaining unaltered. For similar reasons, staining the fence a darker colour or providing landscaping would fail to remedy the breach of planning control as the height and design of the fence would remain unchanged.
6. For the above reasons I find that the steps required to remedy the breach of planning control do not exceed what is necessary and, therefore, the appeal on ground (f) is dismissed.

Ground (g)

7. Although an appeal on this ground has been lodged, the appellant has provided no evidence in support of its contention that the time given to comply with the notice is too short. I find that the two months allowed by the Notice is reasonable to allow for the carrying out of what are relatively minor works. Therefore, the appeal on ground (g) fails.

Roy Curnow

INSPECTOR

¹ Set out in Part 2, Class A (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)