
Appeal Decision

Site visit made on 20 January 2020

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 January 2020

Appeal Ref: APP/U2615/C/19/3235543

Leeder House, Arundel Road, Great Yarmouth, Norfolk, NR30 4JY

- 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 Act").
 - The appeal is made by Mrs Zillah Turner against an enforcement notice issued by the Great Yarmouth Borough Council.
 - The enforcement notice was issued on 19 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission; the erection of a boundary fence over 1 metre in height adjacent to the public highway Arundel Road, Great Yarmouth, Norfolk without the required planning permission being obtained. The works constitute an unauthorised development of the land, a breach of planning controls for the purposes of the Town and Country Planning Act 1990 (as amended).
 - The requirements of the notice are: "Remove the fence (shown in Picture A below) from the land".
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Act.
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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 section 177(5) of the Act.

Procedural matters

2. The enforcement notice relates to the land at Leeder House shown outlined in red on the plan attached to the notice. "Picture A" referred to in the banner heading above is contained within the body of the enforcement notice at Section 6.
3. The parties refer to confusion over matters related to earlier planning applications, and the appellant refers to seeking the removal of a condition on an earlier planning permission. However, no appeals were made against those decisions and I have no power to review them or to discharge a condition in this appeal. This appeal relates solely to the enforcement notice ("the notice"), made under ground s174(2)(a) – that planning permission ought to be granted for the fence as constructed.

Appeal site

4. Leeder House is a corner residential property fronting onto Arundel Road at its junction with a service road.

Main Issue

5. Having regard to the reasons for issuing the notice and to all the evidence before me I consider the main issue to be whether the fence results in an unacceptable increase in risk to highway safety.

Reasons

6. I am required by law¹ to determine the appeal in accordance with the Council's Development Plan policies unless material considerations indicate otherwise. The Council's Development Plan includes the Great Yarmouth Borough Council Core Strategy (2015) (CS). Policy CS16(a) seeks, amongst other matters, to improve road safety. Policy CS9(d) requires all new developments to provide safe access and convenient routes, including for pedestrians, cyclists and disabled people, and at (f) that development does not unduly impact upon public safety. The CS policies reflect the provisions of the National Planning Policy Framework (2019) which advises that developments should be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.
7. The tall close-boarded timber fence subject of the appeal rises above an existing boundary wall along the front boundary with Arundel Road and turns 90° along the side boundary with the adjacent service road. In doing so it encloses and provides a good deal of private garden to the property. Being the only garden at the property I agree with the appellant that the value of the fence, in making the amenity space relatively private and secure, is important in terms of providing a reasonable standard of living conditions for the property's occupiers. Accordingly, I attach due weight to this consideration.
8. For vehicles emerging from the service road onto Arundel Road the line of the fence reduces the visibility splay, and hence the ability for drivers to see along both the line of the pavement (above the existing wall) and the vehicle carriageway to the north. It results in drivers having to stop further forward into the junction in order to gain a sufficient view to make a judgment as to whether they can safely proceed. I acknowledge that parked vehicles on the western side of Arundel Road between the junction and Salisbury Road would have the same or similar obstructing effect on views, but parked vehicles may not always be present. The fence, if permitted, would be a permanent feature. As such, I find there to be an increase in risk to highway safety.
9. Moreover, regardless of whether such vehicles are parked there or not, and of greater concern to me, is the lack of inter-visibility between drivers/vehicles in the service road and pedestrians on the western pavement as they approach the corner. The pavement is pinched to a narrow width here as it turns the corner into the service road. Consequently, the tall fence is close to the carriageway edge and has a greater obstructing effect on inter-visibility with pedestrians at this point.
10. In this regard I am mindful that such pedestrians could be children, or people with disabilities who may, for example, rely solely on eyesight. Additionally, the number of electric/quieter vehicles on roads is increasing and likely to continue to do so, also underlining the need for good visibility for all road users. In short, the ability for drivers (and cyclists) in the service road to have an

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

adequate view of pedestrians on the pavement approaching the junction, and the reverse of that position, is essential. However, this is not presently the case. As such, I find there to be significant harm resulting from an unacceptable increase in risk to highway safety.

11. The appellant's examples of some properties' doors opening directly into the service roads is not a similar situation. Occupiers of those properties would be well aware of the relationship with the road and be able to see vehicles before stepping outside, and there would be direct inter-visibility with vehicles and pedestrians in the service road itself.
12. Reference is made to published Department for Transport statistics for reported national and local road casualties, and the various factors and influences in respect of them, and also to the Highway Code. However, despite both publications, and other continuing educational awareness/publications which seek to minimise accidents, it is against all of this awareness that accidents nonetheless continue to occur. I have no doubt that poor visibility, in whatever other circumstances may pertain, can be a contributory factor. It is against this same knowledge and background and the need to minimise road accidents, including the need to secure adequate levels of visibility for all road users, that I have determined the appeal.
13. The appellant refers, with submitted photographs, to properties and boundary treatments in the local area and their relationship with regard to the road layout. However, I do not know the full circumstances of when those developments were carried out, or whether they benefitted from planning permission or were unauthorised. Additionally, I am not convinced that those that I saw, and those in photographs, are cases with exactly the same circumstances as the appeal before me. Moreover, other properties with less than adequate relationships with the highway are not justification for allowing the development in this appeal, which I have found to be unacceptable. Consequently, none of these other cases set a precedent given that I am required by law to determine the appeal in accordance with the latest up-to-date Development Plan policies and material considerations.
14. For all these reasons I find that the fence results in significant harm due to an unacceptable increase in risk to highway safety, and thereby conflicts with the Council's Development Plan policies. Against that, as I have previously stated, the fence affords privacy and security to the appellant's only garden. However, given the size and layout of the garden, I see no reason why an alternative scheme could not provide both an adequate level of visibility to all road users, while also providing an adequate level of private space for occupiers of the house. Although the fence has been in position for some years with no reported accidents, I am not persuaded to allow the identified risk to highway safety to continue indefinitely.

Conclusion

15. 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 Act.

Thomas Shields

INSPECTOR