



Appeal Decision

Unaccompanied site visit made on 16 January 2020

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Date of decision: 28th January 2020

Appeal Ref: APP/D0121/C/19/3227423

8 Hawksworth Drive, Weston-super-Mare BS22 7YT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Phillip Squires against an enforcement notice issued by North Somerset Council.
 - The enforcement notice was issued on 20 March 2019 under ref. 18/00204/UAW.
 - The breach of planning control as alleged in the notice is: *"Without planning permission, the erection of a fence."*
 - The requirements of the notice are to:
 - "1. Remove the fence and posts (the relevant section of fence is indicated by a blue dotted line on the attached plan) and remove all resulting materials from the land;*
 - or:*
 - 2. Lower the fence situated adjacent to the highway to one metre in height (the relevant section of fence is indicated by a blue dotted line on the attached plan) and remove all resulting materials from the land."*
 - The period for compliance with these alternative requirements is four weeks.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (d), (e) 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 have lapsed.
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Decision

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

Background and matters of clarification

2. No. 8 Hawksworth Drive is a two-storey, detached house situated within a residential area. The front garden is largely given over to hardstanding.
3. The enforcement notice attacks a fence which has been erected adjacent to the highway. The fence is about 2 m high and is constructed of horizontally arranged, overlapping timber panels. It is sited at the back of the footway, marking the front boundary of the land alongside the vehicular access, and returns along part of the common side boundary to no. 6 Hawksworth Drive.
4. For the purposes of the alternative requirements of the notice in paragraph 5, I see that the fence is precisely picked out in a blue dotted line on the plan attached to the notice. I should highlight that the side boundary fence obviously reaches far closer to the front of the house than is depicted by the blue dotted line. This was the Council's choice and it is consistent with the

reasoned approach many Councils adopt, as a rule of thumb, that a side boundary fence between two properties is classed as being adjacent to the highway for only its first two metres back from the footway. Put another way, the appellant is not required in this notice to remove or lower the side boundary fence beyond those first two metres back from the footway.

5. The appellant's two appeal forms indicated an appeal was being made on ground (a) that planning permission ought to be granted for what is alleged in the enforcement notice. However, for the reasons given in correspondence from the Planning Inspectorate and repeated in the heading above, I am afraid that ground (a) and the deemed planning application have lapsed. Thus, the planning merits of the case and the matter of whether planning permission should be granted, which have also been raised by third parties, will not be considered in this appeal decision.

The appeal on ground (e)

6. Ground (e) arises where an appellant wishes to argue that copies of the enforcement notice were not served as required by section 172 of the 1990 Act as amended. The burden of proof falls on the appellant to make out the case. The key issue is whether the notice was served properly on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. If it was not served properly, the test is whether anyone with an interest in the land has been substantially prejudiced by the failure to serve a copy of the notice on them.
7. The Council advises that the first enforcement notice (issued in January 2019) was withdrawn because the address used for Mr Squires was incorrect. However, there is no evidence before me to suggest that the subject enforcement notice (issued in March 2019) was incorrectly served in any way. In the light of this, the appeal on ground (e) fails.

The appeal on ground (c)

8. On ground (c) the onus is on the appellant to show, on the balance of probabilities, that the matter alleged in the notice does not constitute a breach of planning control.
9. The appellant says on the appeal forms he installed a fence in March 2012 (or in March 2013 in other written material from the appellant) to hold up a mature and wide hedge and a fence within that hedge, which were in situ when he bought the house in 2011. The gist of the appellant's case is that there has been fencing at the front of the property for several years at least and that after the damage caused to all the front boundary features by high winds in January 2018, he only replaced the fencing on a like-for-like basis.
10. I have studied the various photographs supplied by the appellant, the Council and the third party at no. 6. It is difficult to make out a former fence as such. Timber posts can be seen in photographs from October 2012. The third party at no. 6 seems to recall a few such posts all about 1.8 m high. The case does not, in fact, turn on establishing exactly what was there before the subject fence was erected, because there seems to be no dispute that all boundary

structures and the hedge were fully cleared away early in 2018, after which the subject fence was erected as an entirely new structure. To that extent, I agree with the Council that the development that has taken place did not amount to the maintenance, improvement or alteration of an existing fence.

11. The subject fence comprised operational development for which planning permission was required and did not satisfy Class A of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This sets out at paragraph A.1 (a) (ii) that any fence erected or constructed adjacent to a highway used by vehicular traffic is not permitted development (PD) if it exceeds one metre in height above ground level. Both sections of the fence exceed one metre above ground level and are, as a matter of fact and degree, adjacent to the highway. Even though only part of the side fence transgresses the PD limits, this still renders the whole of it not being PD under the GPDO.
12. If the first two metres of the side fence back from the footway had been within the required PD height limit of one metre, the side fence would have been lawful. However, the Council appears to have recognised this in considering the extent to which it decided to enforce against the unauthorised fence, through its careful placement of the blue dotted line.
13. Lowering the front fence by half a metre and having the fence painted with a hedge-like graphic would not render any part of the development as PD and would not remedy the breach of planning control. Whether this compromise would have been acceptable in the street scene could only have been properly assessed in the context of an appeal on ground (a). In any event, upholding the notice would not prevent the appellant from entering into further discussions with the Council.
14. I find that the fence does not constitute PD under the GPDO. No express planning permission has been obtained. I conclude on the balance of probabilities that the erection of the fence as a whole therefore amounts to a breach of planning control. The appeal on ground (c) does not succeed.

The appeal on ground (d)

15. In pursuing this appeal on ground (d), the onus is on the appellant to demonstrate on the balance of probabilities that at the time the enforcement notice was issued on 20 March 2019, it was too late to take enforcement action against the fence. Thus, the appellant must show that, by then, the subject fence had been substantially completed at least four years earlier. The material date in this case is therefore 20 March 2015. However, it is evident from the appellant's written representations that the subject fence had not been erected before January 2018. The appeal on ground (d) fails.

The appeal on ground (g)

16. This ground of appeal is that the time given for compliance with the notice falls short of what should reasonably be allowed. The notice gives four weeks for the removal or lowering of the fence, as clarified by my comments in paragraph 4 above. An alternative period has not been stated in the appeal. I

note that the appellant would like more "*time and help to process this.*" The Council does not consider that it has offered too short a timescale to comply.

17. It is desirable that the breach of planning control is remedied without unnecessary delay in order to address the harm that arises from it, as identified in the reasons for issuing the notice. In line with the advice at paragraph 58 of the Government's National Planning Policy Framework, effective enforcement is important to maintain public confidence in the planning system. The works required by the notice are relatively straightforward and should not take very long to complete, whichever option is chosen. The timescale set by the notice should not place a disproportionate burden on the appellant. The Council also has the discretion to extend the compliance period, should any unforeseen difficulties arise, using its powers under section 173A (1) (b) of the 1990 Act as amended.
18. On all the available evidence, I find that the four-week compliance period given in the notice is reasonable. The appeal on ground (g) does not succeed.

Andrew Dale

INSPECTOR