



Appeal Decision

Site visit made on 7 January 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 5 February 2020

Appeal Ref: APP/G1630/C/19/3228844

Parcel 8384, Broadway Road, Winchcombe, Gloucestershire GL20 5TT

- 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 Daniel Stones against an enforcement notice issued by Tewkesbury Borough Council.
 - The enforcement notice was issued on 11 April 2019.
 - The breach of planning control as alleged in the notice is "Without planning permission, the fixing of metal hoarding to existing post and rail fence taking the height of the fence to over one metre adjacent to the highway".
 - The requirements of the notice are:
(1) Remove the metal hoarding attached to the post and rail fencing.
 - The period for compliance with the requirements is 7 days from the effective date -full compliance by 23.05.2019.
 - 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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Decision

1. It is hereby directed that the enforcement notice be corrected by deleting the words "from the effective date – full compliance by 23.05.2019" from Paragraph 6 of the notice. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. The compliance date in the notice is described as "7 days -full compliance by 23.05.2019". As the compliance date is no longer the 23 May 2019 as the notice was the subject of the appeal, the compliance date would be 7 days from the issue of this decision. By deleting the words "from the effective date - full compliance by 23.05.2019", the compliance date of 7 days from the effective date remains the same. I do not, therefore, consider that the amendment would cause injustice to either party.

The appeal under ground (c)

3. In this ground of appeal, the onus is on the appellant to make out the case that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. There is an existing post and rail fence that the metal hoarding has been nailed to and the fence with the hoarding attached does fall within the definition of development as defined in Section 55 of the 1990 Act. The

addition of the metal hoarding made up of corrugated sheets to the original fence also increases the overall height of the means of enclosure to over 1 metre.

4. The appellant's argument is that the fence with hoarding is not adjacent to the highway and is less than 2 metres in height and therefore does not need planning permission. Class A of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) does grant planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence or other means of enclosure subject to limitations. Limitation A.1(a) states that such development is not permitted where " the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development exceed (ii) " 1 metre above ground level". There is no dispute that the fence with hoarding is over 1 metre so the question is, therefore, whether the fence is adjacent to the highway. If the fence with hoarding is adjacent to the highway then at over 1 metre, it would fall outside the limitation and would not fall within Class A of Part 2 of Schedule 2 to the GPDO.
5. There is no definition of "adjacent" within the GPDO and the assessment of what constitutes adjacent is therefore a matter of fact and degree. However, a normal everyday dictionary definition is 'being near or close'. There is a grass verge between the fence with hoarding and the footpath which adjoins the road but no other physical separation between the fence and the footpath adjoining the road. The distance from the fence with hoarding to the edge of the footpath is approximately 2 metres. In my view, the fence with the hoarding attached is adjacent to the highway and therefore falls outside the scope of permitted development rights granted by the GPDO.
6. The appellant has referred to the hoarding being added to the existing fence for security reasons to prevent the possibility of unlawful trespassers occupying the appellant's land. However, whatever the reasons may be, they fall outside the scope of an appeal made under s172(2)(c) only.
7. Having regard to the matters raised, including that the fence and hoarding does not exceed 2 metres high, I am not satisfied that the appellant has discharged the onus upon him to show that the fence in this appeal is not adjacent to a highway used by vehicular traffic. The fence with the hoarding exceeds 1 metre in height, in breach of limitation A.1(a)(ii) to Class A of Part 2 of Schedule 2 to the GPDO and planning permission has not been granted for the addition of the hoarding to the existing fence. As such, there has been a breach of planning control and so the ground (c) appeal must fail.

Conclusion

8. I conclude that the appeal should not succeed and the enforcement notice should be upheld subject to the correction that I have outlined above.

E. Griffin

INSPECTOR