



Appeal Decision

Site visit made on 21 January 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2020

Appeal Ref: APP/T4210/C/19/3230755

26 Lomond Drive, Bury BL8 1UL

- 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 M Ward against an enforcement notice issued by Bury Metropolitan Borough Council.
 - The enforcement notice was issued on 9 May 2020.
 - The breach of planning control as alleged in the notice is: without the benefit of planning permission the erection of a means of enclosure consisting of a timber boundary fence and gate, adjacent to Annecy Close.
 - The requirements of the notice are to dismantle and permanently remove the timber boundary fence and gate, indicated approximately by the blue coloured line on PLAN 1 attached to the Notice.
 - The period for compliance with the requirement is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period. Hence the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
-

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a means of enclosure consisting of a timber boundary fence and gate, adjacent to Annecy Close, on land at 26 Lomond Drive, Bury BL8 1UL.

Procedural Matter

2. In its Statement the Council sets out a case against the appeal on ground (f). However, the appellant has not appealed on ground (f). Therefore, I shall disregard this part of the Council's Statement.

Appeal on Ground (a) and the Deemed Application

3. The appellant has made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the notice.
4. The main issue in this case is whether the development is harmful to highway safety.
5. The appeal property is a bungalow located on the corner of Lomond Drive and Annecy Close, such that its rear garden extends along Annecy Close. Along this garden boundary the appellant has erected a vertical timber boarded fence that

- follows the curvature of Annecy Close to the end of the garden where it meets the driveway of No.1 Annecy Close (No.1). The fence has been erected some distance back from the kerb line of the highway and there is a strip of grass between the fence and kerb.
6. Annecy Close is a relatively short quiet cul-de-sac that is on an incline. It serves some 10 properties who must drive past the fence to access their driveways. The occupiers of No.1 are most affected by the erection of the fence as it is immediately adjacent to their driveway. However, I must assess whether this is detrimental to highway safety.
 7. The Council has not submitted any technical evidence to support their concerns about highway safety and there are no comments from the Highway Authority.
 8. From my observations on site, drivers exiting the driveway of No.1 would still be able to see vehicles and cyclists approaching up Annecy Close because of the set back of the fence and the direction of the curvature of Annecy Close, which is enhanced by the incline of the road. Furthermore, Annecy Close is a short cul-de-sac where traffic speeds are likely to be less, as people slow down to approach their driveways. Furthermore, Annecy Close would be used primarily by residents who are familiar with the road layout. In addition, there is no pavement on this side of Annecy Close or along the line of the fence so there is no conflict with pedestrians when vehicles exit the driveway of No.1.
 9. Other properties and driveways of Annecy Close are located some distance from the fence, or on the other side of the road, such that it does not affect their visibility or their use of the cul-de-sac.
 10. The occupiers of No.1 have written to support the new fence (Appendix A of the appellant's Statement) stating its erection and replacement of the previous hedge has improved their visibility. I note the Council's concerns that future occupiers may have a different opinion, but I concur with the current occupiers based on my site observations and in the absence of any technical highway evidence to the contrary.
 11. Therefore, I am not persuaded that the fence has created a situation that is a significant danger to highway users and their safety. Accordingly, I find no conflict with the adopted 1997 Bury Unitary Development Plan Policies H2/3 and HT6/1 which seek to ensure there is no effect on the visibility and safety of pedestrians, cyclists and drivers and seeks to eliminate points of conflict between these road users. It would not conflict with the design guidance in the Council's Supplementary Planning Document 6: Alterations and Extensions to Residential Properties, as far as it is relevant.

Conclusion

12. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

K Stephens
INSPECTOR