



Appeal Decision

Site visit made on 25 February 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2020

Appeal Ref: APP/R0660/C/19/3222346

Pool House, Clarke Lane, Bollington, Cheshire SK10 5AH

- 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 Thomas Kirk against an enforcement notice issued by Cheshire East Council.
- The enforcement notice was issued on 5 February 2019.
- The breach of planning control as alleged in the notice is the erection of fencing over 1 metre in height adjacent to a highway.
- The requirements of the notice are:
 - a) Remove the fencing shown in the approximate position marked in green on the attached plan marked 'Plan B' between points A to B and B to C, C to D, E to F, F to G, G to I, I to J, J to H and H to K, K to L. The distance between points A to B and K to L is 2 metres.
- Or
 - b) Reduce the height of the fence shown in the approximate position marked in green on the attached plan marked 'Plan B' to a height no greater than 1 metre between points A to B and B to C, C to D, E to F, F to G, G to I, I to J, J to H and H to K, K to L. The distance between points A to B and K to L is 2 metres.
 - c) Remove from the land all resultant materials and debris.
- The period for compliance with the requirements is
 - a) 2 months
 - b) 2 months
 - c) 2 months
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (c)

1. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The erection of a fence comprises operational development within the meaning of s55 of the Act, for which s57 indicates planning permission is required. The development does not constitute permitted development for which planning permission was granted by way of Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO).
2. Schedule 2 Part 2 Class A of the GPDO relates to the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Development is not permitted by Class A if it is constructed adjacent to a highway used by vehicular traffic and the height would exceed 1 metre above ground level.

3. It is clear to me that the fencing has been erected adjacent to a highway used by vehicular traffic (Clarke Lane) and therefore cannot benefit from permitted development rights if it has a height in excess of 1 metre. Although parts of the fence are not immediately adjacent to a highway those sections form part of the whole development and therefore all of the fencing constitutes a breach of planning control.
4. It should also be noted that Part 2 Class A1(c) only allows for fencing to be maintained, improved or altered to be erected which does not exceed the height of the original fencing or boundary treatment. The appellant has contended that the height of the new fencing is no higher than the boundary treatment it replaced, but the GPDO does not allow for the full replacement of the existing boundary in its entirety as appears to have taken place in this case. Class A1 allows for repair or replacement to sections of existing fencing where sections of the original or existing boundary treatment is retained. There are no sections of original fencing in this case as it has all been removed.
5. Therefore, a breach of planning control has been occurred and therefore the appeal on ground (c) fails.

The appeal on ground (d)

6. The ground of appeal is that at the date the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary to show that the fencing had been substantially completed four years before the notice was issued. Therefore, the material date in this case is 5 February 2015.
7. The evidence before me shows that the work on the fencing started in January 2017 and took three weeks to construct; being completed in February 2017. Therefore, on the basis of this evidence the development was substantially completed within four years of the Enforcement Notice being served.
8. The appeal on ground (d) fails.

Conclusion

9. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

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

A A Phillips

INSPECTOR