
Appeal Decision

Site visit made on 4 February 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 March 2020

Appeal Ref: APP/H0738/C/19/3235046

Land known as 9 De La Mare Drive, Billingham, Stockton-on-Tees TS23 3YT

- 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 Ashley English against an enforcement notice issued by Stockton-on-Tees Borough Council.
 - The enforcement notice was issued on 10 July 2019.
 - The breach of planning control as alleged in the notice is the erection of 1.85 metre high wooden fencing and 2 metre high wooden gates to the rear of the Land (facing Byron Close) without planning permission.
 - The requirements of the notice are:
 - a) Remove from the rear of the Land the 1.85 metre high wooden fencing and 2 metre high wooden gates, shown as blue lines as marked on the plan attached to the enforcement notice.
 - b) Restore the Land to the condition it was in before the breach of planning control took place.
 - c) Remove from the Land any resultant debris/materials associated with complying with requirements (a) and (b).
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (f) 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 as amended have lapsed.
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Decision

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

Background

2. The appellant submitted a retrospective planning application for the development alleged in the enforcement notice, reference 17/1118/RET, which the Council refused, and which was subsequently dismissed on appeal.
3. The appellant submitted a further application to the Council which proposed revisions including reducing the height of the gate and parts of the fencing to 1.55m elevating to 1.85m, reference 18/2352/REV. This application was also subsequently refused however, the appellant contends that prior to the determination of this application, before the enforcement notice was issued, he carried out the works the subject of the application.

The appeal on ground (b)

4. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.'
5. The appellant's submissions on this ground are limited but the appellant does not dispute that a fence and gates at the height specified in the notice, were erected on the land at some stage before the notice was issued. Consequently, notwithstanding the later alterations to the fence and gates that were carried out, as a matter of fact, the matters stated in the notice have occurred. The appeal on ground (b) therefore fails.

The appeal on ground (f)

6. This ground of appeal is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173(4) of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)).
7. The notice requires the removal of the fence and gates and so I consider the purpose of the notice is to remedy the breach of planning control in its entirety by restoring the land to its condition before the breach took place (s173(a)). That purpose can only be achieved in this case by removing the fencing and gates and restoring the land to its former condition.
8. The appellant has put forward a number of arguments regarding the security benefits of the fence, that it adds value to neighbouring properties, that the original fence was in a state of disrepair, there are other tall boundary treatments in the area and that the development complies with planning policy. These are matters which relate to planning merits.
9. However, where there is no appeal under ground (a) there is no deemed application for planning permission and, as such, there can be no arguments about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purposes.
10. Thus, despite representations in support of the fence, further consideration of whether the fence causes 'harm' and to what extent any 'harm' impacts upon the public realm is not a matter for a ground (f) appeal.
11. Since the purpose of the notice is to remedy the breach of planning control which has occurred, no lesser steps other than those set out in the notice would achieve those purposes. Therefore, the appeal on ground (f) fails.

Conclusion

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

Felicity Thompson

INSPECTOR