
Appeal Decision

Site visit made on 11 February 2020

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2020

Appeal Ref: APP/C1950/C/19/3231451

Land at 21 Lemsford Village, Lemsford, Welwyn Garden City AL8 7TN

- 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 Mrs Hazel Macarthur against an enforcement notice issued by Welwyn Hatfield Borough Council.
 - The enforcement notice, numbered ENF/2019/0054, was issued on 17 May 2019.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a fence and gate greater than 1 metre in height adjacent to a highway.
 - The requirements of the notice are:
 - (i) Take down and remove the fence and gate, including the posts, as shown in the approximate position by the blue line on the attached plan and as shown by the attached photographs marked A¹.
 - (ii) Remove from the Land all materials, debris, plant and equipment associated with requirement (i) above.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeal on ground (a)

Main issues

2. The site lies within the Green Belt. As a consequence, the main issues are:
 - Whether the development is inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
 - The effect of the development on the openness of the Green Belt.
 - Its effect on the character and appearance of the area; and
 - Whether any harm due to inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

¹ The plan and photographs referred to are those attached to the enforcement notice.

Whether the development is inappropriate within the Green Belt

3. The Framework advises at Paragraph 145 that, other than in the case of a number of specified exceptions, the construction of new buildings within the Green Belt is inappropriate. The fence that has been constructed should be regarded as a building for these purposes and falls to be considered under this paragraph. Accordingly, unless one of the exceptions at Paragraph 145 apply, it is inappropriate development in the Green Belt.
4. The appellant refers to the exception at Paragraph 145(c) of the Framework, which relates to the extension or alteration of a building. In this case, however, the fence is not an extension but a new structure, and so this exception does not apply.
5. The appellant argues that the fence replaces a pre-existing fence. The exception at Paragraph 145(d) relates to the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. In this instance I do not have full details of the pre-existing fence. However, the appellant suggests that it was likely to have been between 1.3m and 1.6m in height and that the new fence represents an increase in the overall height of the structure of 400mm-700mm. In my judgement, such an increase would have a pronounced effect on the visual impact of a fence in this location, and the new fence is materially larger than the one it has replaced. Accordingly, the exception at Paragraph 145(d) does not apply.
6. None of the other exceptions to Paragraph 145 apply and the fence therefore amounts to inappropriate development within the Green Belt. I have not been referred to any development plan policies which are relevant to the question of inappropriateness. Although the Council refers to Policy GBSP1 of the Welwyn Hatfield District Plan 2005, that is concerned with the definition of the Green Belt rather than how the policy is applied. The Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be permitted except in very special circumstances.

Openness

7. The fence is taller than the previous fence and occupies a significant length of road frontage. This, together with its solid construction, means that there is some loss of openness. The Framework establishes that openness is one of the essential characteristics of Green Belt. Accordingly, even the limited loss of openness here is harmful.

Character and appearance

8. The village of Lemsford has a mix of houses, many of them fronting the road. Front boundary treatments vary, and I saw a mixture of garden walls, fencing and planting. Although there are other examples of high fencing in the area, the general character is of lower front boundary treatment. This, together with the planting at many front boundaries, gives a generally open and soft feel to the properties lining the road. The fence at the appeal property contrasts markedly with this as a result of its height and solid form. Given its length and prominent roadside location, it causes significant harm to the character and appearance of the area.
9. I accept that the stark, new appearance of the fence would soften a little over time and it may also be that its appearance could be improved with a change in

its colour. However, that would not address the harm arising from the size and solid form of the fence.

10. I have considered whether the fence could be improved with landscaping. However, there appears to be little scope for landscaping in front of the fence and I do not have any specific scheme to demonstrate what improvements could be secured. In these circumstances, I am not persuaded that the harm could be addressed with a planning condition requiring landscaping.
11. The appellant argues that the new fence is an improvement over the fence that previously existed at the site. However, while that may have been in a poor state of repair, the information before me does not show that it was more visually harmful than the higher fence that has been erected in its place. I appreciate that a 1m fence could be erected as permitted development. However, such a fence would have less impact than the higher fence now in place. While there may be no right to a view across the appellant's property, that does not change my view that the incongruous appearance of the fence is an important planning consideration.
12. For these reasons I conclude that the character and appearance of the area has been harmed. Consequently, the development is at odds with the aims for design and character within District Plan policies D1 and D2.

Other considerations

13. The appellant advises that the fence is needed for security reasons. Details have been provided of a range of incidents at the property, including vandalism and trespass. I appreciate that the large size of the garden makes surveillance difficult. The Framework and District Plan Policy D7 support measures to reduce crime and the fear of crime.
14. Moreover, the appellant's age has been drawn to my attention, and a range of health considerations and personal circumstances have been outlined which are relevant to the requirement for the fence. I am also mindful that age and disability are protected characteristics under the provisions of the Equality Act 2010. These are important considerations.
15. However, it has not been demonstrated that the fence that has been constructed is the only way to address the appellant's concerns. I accept that a low fence would do little to deter intruders. Yet I have no evidence to show whether other options, such as boundary treatment of a different type or design or on a different alignment, have been considered in any detail. Consequently, I attach only limited weight to the appellant's wish to retain this particular fence.

Conclusion

16. I attach substantial weight to the harm to the Green Belt. There is additional harm to the character and appearance of the area. Having considered all matters raised in support of the development I conclude that, collectively, they do not clearly outweigh the totality of the harm I have identified. Accordingly, very special circumstances do not exist, and the development is at odds with the Green Belt policy set out in the Framework. I therefore conclude that the appeal on ground (a) should fail.

The appeal on ground (f)

17. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. It is evident from the case the Council has put forward and the requirements of the notice that the notice seeks to remedy the breach of planning control.
18. The requirement to remove the fence in its entirety is both reasonable and necessary in order to remedy the breach of planning control. I have noted the suggestion that the appellant could reduce the height of the fence and not require express planning permission. However, the breach of planning control is the fence as a whole, not just the top part of it. While permitted development rights for a 1m high fence exist, such rights cannot be claimed retrospectively following an unauthorised development.
19. That said, the enforcement regime is designed to be remedial rather than punitive, and I have considered whether the notice could be amended to reflect the permitted development right for a 1m high fence. However, there is no detailed scheme before me. Consequently, I cannot be sure that it would be practical to reduce the height of the fence to 1m, or whether the finished structure would be satisfactory in appearance. In any event, the appellant has made clear that a 1m high fence would not meet her security needs. Accordingly, it would not be desirable to amend the requirements of the notice along those lines.
20. It is argued that the requirement to remove all the materials, debris, plant and equipment associated with the fencing from the site is unreasonable since they could be stored on the site. However, I regard this as an appropriate measure in order to ensure that the breach of planning control is fully addressed and that the appearance of the site is not harmed. Given the length of the fence, the amount of material to be stored would be significant and the appellant has not given any indication of why she would wish to store it.
21. For these reasons, the appeal on ground (f) fails.

Peter Willows

INSPECTOR