
Appeal Decisions

Site visit made on 7 January 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2020

Appeal A Ref: APP/Z4718/C/19/3230644

Appeal B Ref: APP/Z4718/C/19/3230646

16 Marten Grove, Netherton, Huddersfield, West Yorkshire HD4 7JU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr David Craig and Appeal B by Mrs Valerie Craig against an enforcement notice issued by Kirklees Council.
 - The enforcement notice was issued on 5 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a fence over a metre in height (marked blue on the plan attached to the notice).
 - The requirements of the notice are: within 4 weeks from the date that this notice takes effect reduce the height of the fence (marked blue on the plan attached to the notice) to no more than 1 metre in height above ground level.
 - The period for compliance with the requirements is 4 weeks.
 - The appeals are proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. Appeal A and Appeal B are dismissed, and the enforcement notice is upheld.

The appeal on ground (c)

2. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellants to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
3. The erection of a gate, fence, wall, or other means of enclosure can be permitted development under Article 3, Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, other than in the case of schools, the erection of a gate, fence, wall, or other means of enclosure over 1m in height, which is adjacent to a highway used by vehicular traffic, is not permitted development and planning permission is required for such a proposal.
4. The fence surrounds the sides and front garden of 16 Marten Grove. The appellants do not dispute the height of the fence stated by the Council to be approximately 1.7m and do not dispute that the majority of the fence is located adjacent to the highway. However, they argue in respect of part of the fence between their property and 14 Marten Grove that only the first six feet of that part is a breach of planning control as the remaining part is more than six feet from the highway.

5. I observed at my site visit that a length of the fence is clearly not adjacent to a highway used by vehicular traffic due to its location to the side of the land on the boundary with the driveway at the neighbouring 14 Marten Grove. However, it was erected as and is an integral part of the whole development and therefore also constitutes part of the breach of planning control.
6. The appellants have failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The development is not development that is permitted by any development order and there is no record of planning permission having been granted for it. Appeal A and Appeal B on ground (c) therefore fail.

The ground (f) appeal

7. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
8. 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.
9. In this case the enforcement notice requires the fence to be reduced in height to that which would have constituted permitted development under Article 3, Schedule 2, Part 2, Class A of the GPDO. As such, I find that the purpose in this case is to remedy the injury to amenity that has occurred.
10. That purpose can only be achieved by reducing the height of the fence to that which would have constituted permitted development, that is a fence which is considered by the Government to be an acceptable height, having regard to amenity.
11. The appellants argue that reducing all of the fence exceeds what is necessary to remedy any breach and have suggested a lesser step of reducing the fence to the same height as 'next doors' fence. However, no specific details have been provided about what height that would be and in any event, this and arguments such as the fence is sympathetic to local character, reducing the fence will not make it look any different and alleged safety benefits, are matters which relate to planning merits.
12. Where there is no appeal under ground (a) consequently there is no deemed application for planning permission, 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.
13. Since the purpose of the notice is to remedy the injury to amenity which has occurred, no lesser steps other than those set out in the notice would achieve those purposes. Therefore, Appeal A and Appeal B on ground (f) fail.

Other Matters

14. I have noted the appellants comments addressing third party representations however, those comments relate to the planning merits of the fence and have no bearing on my assessment of the appeals.

Conclusion

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

Felicity Thompson

INSPECTOR