



Appeal Decision

Site visit made on 18 February 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 16 March 2020

Appeal Ref: APP/R4408/C/19/3235001

7 Spa Well Grove, Brierley, Barnsley S72 9LS

- 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 Gillian Rookledge against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The enforcement notice was issued on 19 July 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a fence adjacent to the highway exceeding 1 metre in height.
 - The requirements of the notice are
 - (i) Reduce the height of the existing fence panels (including gravel boards and pillars) that run adjacent to the highway as marked in Appendix 1 to panels which are a maximum of 1 metre.
 - (ii) Reduce the height of the existing fence panels (including gravel boards and pillars) that are affecting the neighbouring properties visibility as marked in Appendix 1 to panels which are a maximum of 1 metre.
 - The period for compliance with the notice is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended (the Act).
-

Decision

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

Procedural Matters

2. The appellant has chosen not to appeal under Section 174(2)(a) of the Act which is that planning permission should be granted for the matters stated in the notice. I am therefore unable to consider the planning merits of the development, policy considerations or take into account examples of other fences in neighbouring streets. Comparisons with the original beech hedge and the existing fence also fall outside the remit of this appeal which is proceeding on the limited ground (f) appeal only.

The appeal under ground (f)

3. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

4. In the notice, the breach of planning control is stated to be "the erection of a fence adjacent to the highway exceeding 1 metre in height." The steps required to be taken are to reduce both the fence adjoining the highway to a maximum of 1 metre and to reduce the fence to a maximum of 1 metre that affects neighbour visibility. Photographs with the relevant sections of fence are attached to the notice.
5. The requirements relate to reducing elements of the fence to 1 metre rather than removal. The reduction would accord with permitted development rights which allow fences of up to 1 metre in height subject to stated conditions and limitations. The appellant has questioned the logic and validity of the Council's reasons for issuing the notice and has asked for the notice to be dismissed. However, an appeal under ground (f) is limited to consideration of whether the requirements of the notice exceed what is necessary to remedy the breach or remedy any injury to amenity and cannot be used to attack the substance of the notice as a whole. As the requirements do fall within the purposes of a notice in accordance with both Section 173(4)(a) and (b) of the Act in seeking to remedy the breach of planning control and to remedy injury to amenity and no lesser steps are advanced, the ground (f) appeal must fail.

Other Matters

6. The signed statement and further comments of the appellant include a number of matters which pre-date the service of the enforcement notice including the conduct of the Council and their decision to serve the notice and issues with neighbours. However, these are matters that fall outside the remit of this appeal.

Conclusion

7. I therefore conclude that the appeal should not succeed and the enforcement notice is upheld.

E. Griffin

INSPECTOR