



Appeal Decision

Site visit made on 18 February 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Appeal Ref: APP/D0121/C/19/3238420 7 Manor Close, Portishead BS20 8NX

- 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 Ian Anderson against an enforcement notice issued by North Somerset Council.
- The enforcement notice was issued on 30 August 2019.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a fence.
- The requirements of the notice are: Remove the fence on the north, east and west boundaries to the rear of the property. Remove all resultant materials from the land.
- The period for compliance with the requirements is four weeks.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c) 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.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellant disputed whether the alleged breach of planning control was correctly described in the enforcement notice. This is more relevant to ground (b)- 'the matter alleged in the notice has not occurred'. Additionally, the appellant argued that the structure could be altered, as an alternative to its removal. This is more relevant to ground (f)- 'the steps required to be taken by the notice are excessive for their purpose'. Therefore, after seeking the views of both main parties, I have considered the appeal as if it had also been made on grounds (b) and (f).
2. In the absence of a ground (a) appeal, arguments regarding the planning merits of the matter alleged in the notice cannot be considered.

Ground (b) appeal

3. To succeed on this ground, the appellant must show that the matter alleged has not in fact occurred, the relevant test of the evidence being on the balance of probability.
4. The appeal property is a modern detached dwelling. A timber structure of significant height has been erected in the property's rear garden. Erecting the structure has involved 'development' as defined in s55 of the 1990 Act. The structure runs adjacent to the west and north boundaries of the garden and is

made up of horizontal timbers and battens screwed on to a timber frame. The structure is supported by substantial timber posts set into the ground at regularly spaced intervals. Timber raised planting beds and seating are attached to the structure along its inner sides apart from in the north-east corner, where the structure is much taller and a timber pergola is attached.

5. Pre-existing fencing remains adjacent to the common boundaries with adjoining residential properties. The structure is set back from those boundaries. Nevertheless, in terms of its appearance there is little that distinguishes the structure from what a reasonable person might describe as a fence. The structure is significantly taller than the pre-existing fencing. It functions as a screen to views, both outwards from the garden as well as inwards from adjoining properties. Therefore, the structure also provides the sort of barrier or enclosure, both physically and visually, that would normally be associated with a fence. As the raised beds and seating add to the enclosure of the garden, it would not be unreasonable to regard them as incidental features. Because the pergola has little enclosing effect, it might reasonably be regarded as an entirely separate construction.
6. Consequently, as a matter of fact and degree and on the balance of probability, I conclude that the structure, which has both the appearance and function of a fence, is most accurately described as such. The ground (b) appeal fails.

Ground (c) appeal

7. To succeed on this ground, the appellant must show that what has been alleged in the notice does not constitute a breach of planning control, for example because it is 'permitted development'. Again, the relevant evidential test is the balance of probability.
8. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) at Article 3, Schedule 2, Part 2, Class A permits development consisting of the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, provided the height limitation of 2 metres above ground level at paragraph A.1 (b) is not exceeded. The permission granted by the GPDO at Article 3, Schedule 2, Part 1 Class E for the provision of buildings incidental to the enjoyment of a dwelling within its curtilage, is not relevant to the erection of a fence.
9. According to the appellant, the fence is around 1.7 metres in height, as measured from the garden ground level. There is no reason to dispute the accuracy of this figure. However, the property is not at a uniform level. Adjacent to the west boundary, the ground is significantly lower than the garden and falls away in a northerly direction. Adjacent to the north boundary, the ground is almost a metre lower than the garden. The ground adjacent to the west and north boundaries is at a similar level to the base of the pre-existing fencing. Although the garden may have been at a similar level since 2007, it is at a significantly higher level and it has a much flatter profile, when compared with the gardens of adjoining residential properties on either side. To my mind, this all suggests that the ground level in the garden was raised significantly at some stage. Consequently, as a matter of fact and degree I find that the lower ground adjacent to the west and north boundaries is at the natural ground level.

10. As a fence does not fall within the GPDO definition of a 'building', the formula for measuring height set out in the GPDO Article 2 (2) does not apply. Therefore, in the absence of any factor which might indicate otherwise, it would not be unreasonable to measure the fence height from the natural ground level. For the most part, the vertical posts supporting the fence have been inserted at this level. The Council measured the overall height of the fence at around 2.7 metres, rising to around 3.6 metres in the north-east corner, from this level. There is no reason to suggest those figures are inaccurate. Accordingly, the fence exceeds the 2 metre height limit at Class A, paragraph A.1 (b).
11. I am given to understand that the fence partly replaced a timber trellis, previously adjacent to the north boundary. Whilst the GPDO Article 3, Schedule 2, Part 2, Class A, paragraph A.1 (c) permits the maintenance, improvement or alteration of a fence, that does not extend to erecting an entirely new fence, as in this instance.
12. Consequently, on the balance of probability the fence is not permitted development and the ground (c) appeal also fails.

Ground (f) appeal

13. At s173 (4), the 1990 Act provides that an enforcement notice can remedy a breach of planning control, including by restoring the land to its condition before the breach took place, or it can remedy any injury to amenity which has been caused by the breach.
14. In requiring the fence to be removed, the purpose of the notice is clearly to remedy the breach by restoring the property to its condition before the breach took place. Lesser steps, such as cladding the fence or applying artificial hedge material on its sides, would not remedy the breach as the fence would still be in situ. Therefore, I conclude that requiring removal of the fence is not excessive, having regard to the purpose of the notice.
15. Nevertheless, the breach clearly does not extend to the pre-existing fencing adjacent to the east boundary of the property. In such circumstances, removing the fencing adjacent to that boundary would be excessive in terms of remedying the breach. Accordingly, I shall vary the notice to delete the relevant part of the requirement.
16. It follows that the ground (f) appeal succeeds to this limited extent.

Conclusion

17. For the reasons given above, I conclude that the appeal should succeed on ground (f) and I am varying the enforcement notice, prior to upholding it.

Formal Decision

18. The appeal is allowed on ground (f) and it is directed that the enforcement notice be varied by deleting the word "east" in the first sentence of paragraph 5. Subject to the above variation the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR