



Appeal Decision

Site visit made on 13 February 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 23 March 2020

Appeal Ref: APP/A1910/C/19/3232834 & 3232835 68 Tring Road, Wilstone, Tring HP23 4PD

- 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 & Mrs Lovis against an enforcement notice issued by Dacorum Borough Council.
 - The enforcement notice was issued on 11 June 2019.
 - The breach of planning control as alleged in the notice is: Erection of close-boarded fence in excess of 2 metres in height, topped with a trellis, immediately adjacent to the highway within the Wilstone Conservation Area.
 - The requirement of the notice is to:
 - Reduce the height of the fencing immediately adjacent to the highway to no more than 1.00m along its entire length. For the avoidance of doubt, this height includes any trellis.
 - The period for compliance with the requirements is 3 months after the date this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

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

Background

2. A hedge enclosure which fully spanned the curved boundary off the highway was removed and, in September 2018, following a wooden fence being erected in place of the hedge, the Council initiated an enforcement investigation. A retrospective planning application (ref 4/00176/19/FHA) was subsequently submitted in an attempt to gain planning permission for the fence's retention, but permission was refused by the Council in June 2019 due to its height, siting and appearance, and the consequential effect on the Wilstone Conservation Area. A further reason for refusal related to the fence's considered impact on highway safety.
3. Following the above decision the Council saw it expedient to issue the enforcement notice now at appeal.

The Appeal on Ground (f)

4. The appeal on ground (f) is that the requirements of the notice exceed what is necessary in the circumstances. S173(4)(a) and (b) of the 1990 Act as amended provides that the purposes of an enforcement notice can be (a) to remedy the breach of planning control, including by restoring the land to its

- condition before the breach took place, or (b) to remedy any injury to amenity which has been caused by the alleged breach.
5. The notice requires for the fence to be reduced to a height of no more than 1m which, for boundary enclosures adjacent to a highway, is permissible under Schedule 2, Part 2, Class A.1(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. Given the location of the fence at issue this proviso directly applies in this instance. In the circumstances I consider that the purpose of the notice is to remedy the breach by making the development comply with the limitations of the said permitted development entitlement.
 6. In this instance the appellants refer to "our latest application", but no plans/drawings in this respect were provided along with the appeal papers. Nonetheless, I have checked for any such submission insofar as its details would be on the Council's statutory register. A revised application (ref 4/01970/19/FHA) was made in August 2019. The proposal would involve the fence being set back, for the main part, approximately 0.5m from the highway boundary, where it follows the curve in the road. However, this distance would increase to some 1.85m at the fence's north-most point, adjacent to No 68's car port, with the fence's straight section pulling back from the curved boundary. The appellants indicate that this would aid visibility in the interests of highway safety. Also, plants would be positioned in front of the fence, and the appellants indicate that this screening will substantially reduce the sense of enclosure.
 7. The above application, made in August 2019, was subsequently refused planning permission in February 2020 due to the Council, once again, considering the proposal as having a harmful effect on the character and appearance of the Conservation Area and, due to objections having been raised by the local highway authority, a considered adverse impact on highway safety.
 8. In instances where no ground (a) appeal has been made and no application for planning permission is deemed to have been made, such as in this case, it is not appropriate for appellants to introduce arguments on the planning merits of their appeal in the context of an appeal on ground (f). The power available to an Inspector under s176(1) to vary the terms of the notice cannot be used to attack the substance of the enforcement notice.
 9. It is open to the appellants to exercise their right of appeal within the requisite time period, against the Council's decision to refuse planning permission on the latest application (ref 4/01970/19/FHA). However, for the purposes of the current appeal, without plans or drawings before me to properly illustrate any alternative proposal and no evidence of any real substance to articulate the scheme, the appeal on ground (f) must fail.

Timothy C King

INSPECTOR