
Appeal Decisions

Site visit made on 18 February 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2020

Appeal A Ref: APP/M0655/C/19/3237524

Land at Birch Avenue, Winwick, Warrington WA2 9TN

- 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 Colin Griffiths of Satnam Developments Ltd against an enforcement notice issued by Warrington Borough Council.
- The enforcement notice was issued on 20 August 2019.
- The breach of planning control as alleged in the notice is *without planning permission the construction of a wooden enclosure fence*.
- The requirements of the notice are:
 - a) Remove the wooden fencing enclosure from the land, or
 - b) Reduce the height of the wooden fencing enclosure to no more than 1m in accordance with the limitation specified within the Town and Country Planning (General Permitted Development) Order 2015, Schedule 2, Part 2, Class A.
- The period for compliance with the requirements is 1 calendar month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period. Hence the application for planning permission deemed to have been made under section 177(5) of the Act, as amended, falls to be considered.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/M0655/W/19/3237525

Land at Birch Avenue, Warrington WA2 9TN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Satnam Developments Ltd (Mr Colin Griffiths) against the decision of Warrington Borough Council.
- The application Ref 2019/35001, dated 1 May 2019, was refused by notice dated 19 August 2019.
- The development proposed is erection of wooden enclosure fence.

Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. In Appeal A, the appellant has appealed the enforcement notice on ground (a) – that planning permission ought to be granted for the matters alleged in the enforcement notice (the 'Notice'). Appeal B is made against refusal of planning permission for the identical development. Since the considerations in both appeals are the same, despite differences in the descriptions of the development, I have treated both cases together.

Main Issue

2. The main issue is the effect of the development on the character and appearance of the area.

Reasons

3. The appeal site is an area of hardstanding adjacent to the highway at the end of Birch Avenue, a residential cul-de-sac. The land is located adjacent to the vehicular entrance to a health facility (NHS Fairhaven The Alders) and its car park. Opposite is a row of semi-detached bungalows. Land behind the site is open fields. The bungalows have their own on-site driveway parking. Most of the other two storey dwellings in the road also have driveway parking, but vehicles were also parked on the road at the time of my visit.
4. The timber 'post and rail' fence comprises timber upright posts at regular intervals, with two horizontal rails located approximately 0.7m and 1.3m above the ground. The design of fence is similar to the existing fence at the rear of the site.
5. Fences of this type are not a prevailing feature of the street, as most properties have front gardens with short sections of walls and hedges. But the area of hardstanding is not a prevailing feature of the streetscene either. From residents' submissions it appears that the hardstanding once served as driveway and parking area in front of a row of garages, which are no longer there.
6. From my site visit, I observed that the two horizontal rails of the fence allow views through the fence to the hedgerow, timber fence and fields behind. Whilst the fence extends for a considerable length along the road, its lightweight construction and see-through nature reduces its visual impact. Furthermore, it is at the end of the road where the character and appearance of the street changes and becomes more open.
7. The Notice has 2 alternative requirements. The first is to remove the fence entirely. However, under "permitted development"¹ a fence can be erected *provided* [my emphasis] the height does not exceed 1m when constructed adjacent to a highway. The effect of requirement (a) of the Notice is that once the fence had been removed, the appellant could, if he chose, erect a new fence in the same location up to 1 metre in height. Furthermore, under permitted development there is no restriction on the type or design of fence that can be erected.
8. The alternative requirement (b) of the Notice is for the fence to be reduced in height to no more than 1m, which is to the height allowed under permitted development. The effect of the second alternative is to therefore allow a fence of this lightweight design and construction to remain enclosing the hardstanding, effectively under-enforcing.
9. In any event, a fence up to 1m in height can be erected around the hardstanding without the need for planning permission, regardless of its design or quality. This is a fall-back position that is a material consideration in my decision.

¹ Schedule 2, Part 2, Class A of the Town and Country (General Permitted Development) (England) Order 2015 (as amended)

10. The fence as erected is approximately 1.4m high so exceeds the 1m permitted development height. However, I do not regard the additional height, effectively the extra rail, to materially affect the appearance of the fence. In conclusion on the planning merits of both appeals, the simple and minimal design of the fence is not unduly prominent in the streetscene. It maintains the openness of this part of the street and does not harm the character and appearance of the area. Its construction and use of simple timber products do not unduly detract from this.
11. Accordingly, the development would not conflict with Policies QE6 and QE7 of the Warrington Local Plan Core Strategy, which seek, amongst other things, to ensure development does not have an adverse impact on the environment or amenity of those living nearby and enhances the character and appearance of the street scene and local area.

Other Matters

12. I acknowledge that the hardstanding area has been used by a number of residents over the years to park their cars on, whether with or without the owner's permission. I accept that fencing off the area may cause inconvenience to some residents and may increase on-street parking in Birch Avenue. However, the cessation of parking, with or without the erection of a fence, is a civil matter between the owner and those affected. Furthermore, highway safety was not raised as a reason for refusal of planning permission or issuing the enforcement notice.

Conditions

13. The Council has suggested conditions. As the fence is already erected there is no need for a condition specifying plans. The Council suggest removing permitted development rights to prevent the fence being altered and it refers in the Committee report to wanting to ensure no cladding is placed on the fence to preserve the openness of the area. As I have found that the fence, as constructed, preserves the openness of the street such a condition would be appropriate.

Conclusion

14. For the reasons given above, and having regard to all relevant matters raised, I conclude that Appeal A succeeds on ground (a) and planning permission will be granted on the deemed application. Appeal B is allowed and planning permission is granted.

Formal Decision

Appeal A: APP/M0655/C/19/3237524

15. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of a wooden enclosure fence on land at Birch Avenue, Winwick, Warrington WA2 9TN referred to in the Notice, subject to the following condition:
 - Notwithstanding the provisions of Schedule 2, Part 2, Class A of the Town and Country (General Permitted Development) (England) Order 2015 (as

amended) or any order revoking and re-enacting that Order with or without modification, no alterations or additions shall be made to the fence hereby approved.

Appeal B: APP/M0655/W/19/3237525

16. The appeal is allowed and planning permission is granted for the erection of wooden enclosure fence at land at Birch Avenue, Warrington WA2 9TN, in accordance with the terms of the application, subject to the following condition:

- Notwithstanding the provisions of Schedule 2, Part 2, Class A of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) or any order revoking and re-enacting that Order with or without modification, no alterations or additions shall be made to the fence hereby approved.

K Stephens
INSPECTOR