



Appeal Decisions

Site visit made on 18 February 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2020

Appeal A Ref: APP/G5180/C/19/3238930

Appeal B Ref: APP/G5180/C/19/3238931

3 Greenoak Rise, Biggin Hill, Westerham TN16 3RL

- 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 Mrs Kim Miles (Appeal A) and Mr Steven Miles (Appeal B) against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 13 August 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of a wooden boundary fence to a height in excess of 1m to the rear garden of the property, fronting Lusted Hall Lane.
 - The requirements of the notice, set out in section 5 of the notice are:
 - (1) Remove the wooden fencing in excess of 1m in height.
 - (2) Remove all materials associated with paragraph 5 (1) above from the Land.
 - (4) Keep the Land in a clean and tidy condition.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal A and B Decision

1. It is directed that the enforcement notice is corrected by the deletion of "(4) Keep the Land in a clean and tidy condition." in section 5 of the notice. The ground (g) appeals succeed and the enforcement notice is varied by the deletion of "one month" in section 6 of the notice and the substitution instead of "two months". Subject to the correction and variation the enforcement notice is upheld.

Preliminary Matter

2. The third requirement of the notice is numbered (4) which appears to be a typographical error. In any event, this requirement is based on subjective judgement and so I delete it from the notice.

Reasons

The appeals on ground (b)

3. An appeal on ground (b) asserts that the matters alleged in the enforcement notice have not, as a matter of fact, taken place. The enforcement notice alleges the construction of a wooden boundary fence to a height in excess of 1m to the rear garden of the property. Indeed, this is what I saw at my site visit. Therefore, it cannot be said that the alleged breach has not, as a matter

of fact, taken place. Whether the breach required planning permission is a matter for the ground (c) appeal and the appeals on ground (b) fail.

The appeals on ground (c)

4. The erection of a fence is development under section 55 of the above Act and there is no evidence in this case that planning permission exists for the fence which has been constructed. The appellants consider that no breach of planning control has occurred as the fence is not adjacent to the road but is set back from it. They describe it as 'set back over 500mm from the road' and state that over 600mm has been left between the highway and the fence line.
5. I have considered whether the fence may be development permitted by way of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the Order'), specifically, Schedule 2, Part 2, Class A. This grants planning permission for the construction of a fence subject to limitations, one of which is that the height of any such fence constructed adjacent to a highway used by vehicular traffic must not exceed 1m above ground level.
6. The fence in this case fronts Lusted Hall Lane which is a highway used by vehicular traffic. It is clear that the fence exceeds 1m in height and so the question arises as to whether the fence is adjacent to a highway. The word 'adjacent' is not defined in the above Act or the Order, which uses the expression 'adjacent' rather than 'abutting'. Moreover, it has been established in case law¹ that such a fence does not need to be abutting the highway in order to be adjacent to it, and, it is sufficient for the fence to be adjacent to the highway in order to trigger the 1m height limit. In my judgement, the space between the highway and the fence in this case is negligible and is adjacent to a highway. Therefore, the fence is not permitted development.
7. My attention has been drawn to comments by a previous Inspector in a previous appeal on the site². I have considered that decision and there is nothing in it that leads me to a different conclusion on this matter. Considering all of the above points, the appeals on ground (c) fail.

The appeals on ground (f)

8. Under section 173(4) of the above Act, when serving an enforcement notice the Council may seek to (a) remedy the breach of planning control, or (b) remedy any injury to amenity which has been caused by the breach. The notice in this case does not require removal of the entire fence and so the purpose of the notice is to remedy the injury to amenity which has been caused by the breach.
9. The appellant considers that the fence will soon not be visible due to the growth of vegetation. But the fence is a permanent structure whereas vegetation changes over time and in this case, there is no evidence of any means by which vegetation can be retained to mitigate the visual impact of the fence, as is suggested by the appellants. No lesser steps have been suggested which would achieve the purpose of the notice and so the appeals on ground (f) fail.

¹ *Simmonds v Secretary of State for the Environment and Rochdale MDC* (1980) 40 P.&C.R. 432

² APP/G5180/D/16/3155340 dated 3 November 2016

The appeals on ground (g)

10. The appellants consider the period specified in the notice is not sufficient to comply with the requirements of the notice. They refer to weather conditions, seasonal factors, hardship, mental health and wellbeing. The requirements of the notice are relatively straightforward and there is no evidence any of the above factors mean the period for compliance should be extended in this case.
11. The appellants state the fence was originally erected from their side of the boundary and that since then vegetation has been planted affecting how accessible the fence is from the appellants' property. Consequently, it is said that the requirements of the notice would have to be carried out from the highway side of the boundary requiring closure of the road.
12. The Council has said it is not averse to the period for compliance being extended and so I shall extend the period for compliance from one month to two months so that there is more time in the event that the road needs to be closed to carry out the requirements of the notice. Accordingly, the appeals on ground (g) succeed.

Other Matters

13. There is no ground (a) appeal before me. Therefore, I cannot assess the fence in light of any planning policies. Nor can I consider any planning merits of the appeal development, including safety or security. Nor can I compare it with other examples in the area.
14. At the final comments stage, the appellant has advised that amendments have been made to the ownership of the land and the boundary fencing. However, these points have no bearing on my consideration of this appeal.
15. The appellant states their actions were based on advice from the Council and that the Council was excessive to move straight to issuing an enforcement notice without entering a dialogue. However, these are not matters for me to consider in the context of an appeal under section 174.

Conclusion

16. For the reasons given above, I conclude that the period for compliance with the requirements in the notice falls short of what is reasonable so I correct and vary the enforcement notice prior to upholding it. The appeals on ground (g) succeed to that extent.

L Perkins

INSPECTOR