



Appeal Decision

Site visit made on 10 March 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 15 April 2020

Appeal Ref: APP/B3030/C/19/3239538

Land at 2 Willow Holt, Lowdham, Nottinghamshire NG14 7EJ

- 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 Miss Chantelle Nunn against an enforcement notice issued by Newark & Sherwood District Council.
- The enforcement notice was issued on 24 September 2019.
- The breach of planning control as alleged in the notice is without planning permission, 'development' consisting of the erection of a fence (means of enclosure) along the front (eastern) and side (north eastern) boundaries, as shown on photographs 1 & 2, and outlined in RED on Plan A.
- The requirements of the notice are:-
 - A. Reduce to a height no more than 1 metre above ground level, the gates, fence and any other means of enclosure along the front (eastern) and side (north eastern) boundaries, as shown on photographs 1 & 2, and outlined in RED on Plan A.
- The period for compliance with the requirements is 56 days.
- The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
2. The description of the alleged breach references photographs 1 & 2 and an outline in red on Plan A. However, the extent of the fence outlined in red does not correlate with the extent of fence as shown on the photographs. As such, I consider that there could be uncertainty as to which part of the fence the breach of planning control, cited in the enforcement notice, relates to.
3. Nevertheless, as the outline in red on Plan A appears to be a relatively precise indication of the extent of fence that is part of the alleged breach I consider that the photographs are not required. Consequently, I intend to delete the wording '*on photographs 1 & 2, and*' from the description of the alleged breach and from requirement A. I consider that I can carry out these corrections without injustice to either party.
4. I also consider that requirement A of the enforcement notice needs to reflect the description of the alleged breach. As no gate or other means of enclosure are cited in that description or the reasons for issuing the enforcement notice, I

intend to delete the wording '*the gates, fence and any other means of enclosure*' and replace it with '*the fence (means of enclosure)*'. I consider that I can carry out these corrections without injustice to either party.

The ground (a) appeal and deemed planning application

Main Issue

5. The main issue is the effect on the character and appearance of the surrounding area.

Reasons

6. The appeal property is a bungalow which lies adjacent to an approximately 90-degree bend on Willow Holt. Therefore, the front and side boundaries of the appeal site front onto Willow Holt. The dwellings on Willow Holt are a mix of detached bungalows and 2-storey houses. Despite the variety to the height and architectural style of the dwellings they are set back behind relatively generous landscaped front gardens that are predominantly open plan in design.
7. There are some fences of a height of around 2 metres on return boundaries and where a boundary to a property is adjacent to a highway. Nevertheless, these boundary treatments are generally set back from the highway and have landscaping associated with them. Moreover, the predominantly open plan design and landscaping of the front gardens convey a sense of space and verdant character and appearance to the surrounding area.
8. The Council's Householder Development Supplementary Planning Document (SPD) provides guidance on the erection of boundary treatments. It states, amongst other things, that '*The general principles to guide the choice of boundary treatment and where permission is required the aspects against which a proposal would be considered include: (i) Whether the scale, height and choice of material is in keeping with the character and appearance of the dwelling and surrounding area, and is not considered as too intrusive – particularly important where a treatment is proposed on a corner plot. (ii) Whether the proposed treatment would create an oppressive appearance.*'
9. The height and design of the means of enclosure (fence) that has been erected in this appeal case has resulted in a dominant structure, whose treated timber and concrete construction has a harsh and stark appearance. Moreover, its height, length and position, adjacent to the footway, presents a bland and enclosed frontage to passers-by, which contrasts markedly with the spacious and verdant character and appearance of much of the surrounding area. Consequently, the fence is an intrusive and oppressive feature that appreciably harms the character and appearance of the area. Even if the fence were to be painted, as has been suggested, it would not mitigate the overall height and sense of enclosure imparted by the fence.
10. I appreciate the appellant's desire to provide a private, safe and secure place for the dwelling's occupiers and visitors and that the hedge that has been replaced had become very big and dead in places. I also recognise that there is often a difficulty in achieving privacy and a sense of enclosure within the rear part of gardens for properties situated on corner plots, as is the case here. It is not unreasonable for the occupants to seek a degree of privacy within sections of the garden. However, it appears to me that these aims could be achieved by enclosing a smaller area of the garden, with fencing that was not adjacent to

the highway and/or by planting a new hedge. Such a hedge need not encroach onto the pavement if planted within the garden and maintained. Accordingly, I consider that alternatives would be available whereby privacy, security and a means of enclosure could be achieved without harming the character and appearance of the area.

11. The appellant has provided a number of examples of other fences and means of enclosure in the area, and I was able to see many of those on my site visit. However, I do not know the precise circumstances and planning considerations concerning those other means of enclosure and how these equate to those at the appeal site. Moreover, whilst the examples are taken from local streets, as stated above, they are exceptions rather than the norm and are generally set back from the highway. In any event, I have determined the appeal on its own merits.

Other matters

12. I have noted the point made by the appellant about the Council's handling of the matter. Furthermore, I appreciate that the appellant undertook the works in good faith and did not seek to flout the planning regulations. However, these points have not affected my decision, which is based on the planning merits of the proposal.

Conclusion - The ground (a) appeal and deemed planning application

13. For the reasons given above and taking into account all other matters raised, I conclude that the fence has caused significant harm to the character and appearance of the area. It follows that the development conflicts with Core Policy 9 of the Amended Core Strategy that seeks a high standard of sustainable design that is of an appropriate form and scale to its context. It also conflicts with Policies DM5 and DM6 of the Allocations & Development Management DPD which, amongst other things, seek that the rich local distinctiveness of the District's landscape and character of built form should be reflected in the form, design, materials and detailing of development and that planning permission will be granted for means of enclosure providing that the proposal respects the character of the surrounding area.
14. It also does not comply with paragraph 127 of the National Planning Policy Framework which, amongst other things, states that planning decisions should ensure that developments are sympathetic to local character, including the surrounding built environment and landscape setting. The development does not also comply with the guidance on boundary treatments in the SPD.
15. In this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.
16. In view of the above, I conclude that the appeal on ground (a) must fail. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Other Matters

17. No appeal on ground (g) was made in respect of the 56 days period of time for compliance with the enforcement notice, and in my view 56 days is a

reasonable period of time to comply with the requirements of the notice under normal circumstances.

18. However, since the enforcement notice was issued it is of course now clear that the current Coronavirus pandemic has placed severe restrictions on the ability of people, services and businesses to move about freely and to carry out works. Consequently, 56 days may not now give sufficient time for the appellant to carry out remedial works and/or for scheduling contractors to undertake them. The main parties were given the chance to comment on this issue.
19. The Council has stated that in recognition of the uncertainty about the length of time that the current restrictions may be in place that a reasonable period for compliance would be 6 months. I have no reason to disagree with the Council and I will therefore extend the period of compliance to 6 months. I am also mindful that the Council could exercise its own powers under section 173A(1)(b) of the 1990 Act to further extend the period of compliance beyond 6 months, should it be satisfied that it becomes reasonably necessary to do so. This is however, a purely discretionary power within the Councils' gift to exercise.

Formal Decision

20. It is directed that the enforcement notice be corrected and varied by: -

- Deleting the wording '*on photographs 1 & 2, and*' in the description of the alleged breach and requirement A;
 - Deleting the wording '*the gates, fence and any other means of enclosure*' and replace it with '*the fence (means of enclosure)*' in requirement A.
 - Deleting, in paragraph 5, '*56 days*' and substitution of '*six months*' as the time for compliance.
21. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

D. Boffin

INSPECTOR