
Appeal Decisions

by **K R Saward Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 14 May 2020

17 Coleman Crescent, Ramsgate CT12 6AB

Appeal A: APP/Z2260/C/19/3243336

- 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 Barbara Budnik against an enforcement notice issued by Thanet District Council.
 - The enforcement notice was issued on 10 December 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a fence and pillars over 1 metre high adjacent to the highway.
 - The requirement of the notice is to remove the unauthorised fence and pillars.
 - The period for compliance with the requirement is 1 month.
 - 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 application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Appeal B: APP/Z2260/D/19/3242328

- 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 Mrs Barbara Budnik against the decision of Thanet District Council.
 - The application Ref FH/TH/18/1639, dated 29 November 2018, was refused by notice dated 30 September 2019.
 - The development is the erection of a 1.6m high front fence.
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Decisions

Appeal A

1. It is directed that the enforcement notice be varied by the substitution of 3 months instead of 1 month as the period for compliance. Subject to that variation the appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is dismissed.

Procedural Matters

3. In light of travel restrictions currently in place due to the COVID-19 pandemic, I consider that these appeals can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available, supplemented by additional photographs supplied by the parties and the use of publicly accessible digital tools. Opportunity has

been given to both parties to provide comments on this approach and I have taken any responses into account.

4. The development for which permission is sought in Appeal B has already been carried out. Section 73A of the Act allows permission to be granted for development carried out before the date of the application. The retrospective planning application was also for the replacement of front elevation windows. The Council's decision to refuse planning permission relates only to the front boundary treatment. As the original application form describes the development simply as a 'Fence', I have utilised the more detailed description from the Appeal Form.
5. Appeal A is brought on ground (a) only. However, the grounds of appeal say that the appellant did not apply for planning permission for the 1.6m high fence because the Council's website says that planning permission is only required for a fence above 2m in height. This potentially raises an argument pertinent to ground (c). An appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. It is appropriate that I address the matters raised as though an appeal was brought on this ground.

Appeal A only - whether there is a breach of planning control

6. A screen shot of the Council's website page referenced above is provided. Under the heading of "*Do I need permission to put up a fence /wall?*" the text says "*Near a road, a public footpath or bridleway a fence or wall up to 1 metre (3ft 3in) does not require planning permission, if the fence/wall will be over 2 metres (6ft 6in) it will require planning permission wherever it is situated.*"
7. This advice reflects the provisions within Article 3(1) and Schedule 2, Part 2, Class A of the Town and Country (General Permitted Development) (England) Order 2015. This permits the erection of a fence up to 2m in height without applying for express planning permission unless one of the restrictions apply. One restriction is where the fence is adjacent to a highway used by vehicular traffic. In that case, the fence must not exceed 1m above ground level.
8. The fence in this case is erected along the front boundary of the property where it is adjacent to the highway. Therefore, it is caught by the 1m height limit and does not benefit from the permitted development provisions. Consequently, the fence was erected in breach of planning control and an appeal on ground (c) would be bound to fail.

Appeals A and B - ground (a), the deemed planning application & Appeal B

9. The development applied for in Appeal B is the same as that attacked by the enforcement notice in Appeal A where there is also a ground (a) appeal and deemed planning application. Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. This ground is concerned with the planning merits of the case, and it raises the same issues as the deemed application for planning permission. It also raises the similar issues on the linked section 78 appeal and I therefore deal with them together.

Main Issue

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

Reasons

11. Coleman Crescent is predominantly composed of two-storey semi-detached houses lining both sides of the road. There is a high level of uniformity with the housing being very similar in size and built in simple traditional style. The houses are set back to follow the curve in the road to provide a front garden. Many are enclosed with low picket style fencing and gates whilst some of the houses have no boundary treatment to the highway frontage.
12. The appeal property is a semi-detached house located midway along Coleman Crescent. The garden has been enclosed by fencing erected to the front and side boundaries partly atop a low wall and set between pillars to a total height of about 1.6m. The combination of height, horizontal slatted form and solid pillars accentuates its presence. The property appears heavily enclosed in contrast to the more open character of its surroundings. Given the height, position and form, the fencing/pillars are unduly prominent and fail to complement the local character. The uniformity which typifies the road is disrupted in consequence.
13. The appellant has produced photographs to demonstrate that there are different types of fencing and walls located beside the highway in the wider area exceeding 1m in height. Only one example appears to be in Coleman Crescent towards the junction with Margate Road. It is not close to the appeal site and does not reflect the rest of Coleman Crescent where the prevailing pattern is for much lower boundary fencing which preserves openness. As such, comparisons cannot be readily drawn especially as it is unclear how long any of the other fencing/walls have been in situ or the circumstances surrounding their erection.
14. When the Council Officer said in the delegated report that the development would accord with the Local Plan and the National Planning Policy Framework the comments related to the effect of the development on neighbouring living conditions. Just because there is no harm on one issue does not mean that the fencing is acceptable when judged against other relevant issues.
15. I can appreciate that the appellant wants a safe environment for her family, but that could be achieved by a lower, less prominent means of enclosure. Council Officers may not have raised concerns over the fencing when visiting the property on other occasions and for other purposes. It does not mean that the Council, as local planning authority, condoned the development. The appellant expresses disappointment with the approach taken by the Council, but that cannot influence my decision which can only be made on the planning merits.
16. In this instance, the development has a significantly harmful effect on the character and appearance of the surrounding area contrary to Policy D1 of the Thanet Local Plan, 2006, which requires high quality design which respects or enhances the character or appearance of the surrounding area. It also conflicts with the provisions for good design in Paragraph 124 of the National Planning Policy Framework and Paragraph 127.c) which seeks development that is sympathetic to local character, including the surrounding built environment.

Appeal A only - period for compliance

17. Whilst no appeal has been brought on ground (g) to argue that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed, I am mindful that circumstances have changed since the appeal was lodged. Given the ongoing global pandemic, the period of 1 month

given in the notice may not suffice to complete the works required.

18. In the circumstances, I shall vary the notice to extend the period of compliance to 3 months.

Conclusion

19. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice in Appeal A, as varied, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

KR Seward

INSPECTOR