



Appeal Decisions

Site visit made on 2 June 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2020

Appeal A: APP/G2713/C/19/3242190

Appeal B: APP/G2713/C/19/3242191

Land at Newsham Grange, Newsham, Thirsk, North Yorkshire YO7 4DF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Ian McGowan (Appeal A) and Mrs Susan McGowan (Appeal B) against an enforcement notice issued by Hambleton District Council.
- The enforcement notice was issued on 31 October 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a 1.83 metre high fence adjacent to a highway.
- The requirements of the notice are (i) Remove the fence identified in blue on the attached plan; (ii) Remove from the land all materials associated with the fence from the land.
- The period for compliance with the requirements is one month.
- The appeals are proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are allowed and the enforcement notice is quashed.

Reasons

The appeals on ground (c)

1. The appeals on ground (c) are that the matter alleged does not constitute a breach of planning control. There is no dispute between the parties that the erection of the fence, subject to the notice, constitutes an act of development in the context of Section 55 of the Act.
2. I therefore turn to the question of whether the fence would have amounted to permitted development. Article 3, Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure constitutes permitted development, subject to various conditions.
3. Paragraph A.1. of Class A goes on to indicate that, with the exception of specific circumstances relating to schools, development is not permitted by Class A if the structure in question is erected or constructed adjacent to a highway used by vehicular traffic and would exceed a height of 1 metre above ground level. In any other case the height of the structure should not exceed 2 metres above ground level, in order to be permitted development.
4. The parties do not dispute that the fence in this case exceeds 1 metre in height but does not exceed 2 metres in height. The appeals therefore turn on

- whether the fence should be regarded as being 'adjacent' to a highway used by vehicular traffic.
5. Case law has established that a fence does not need to be abutting a highway in order to be adjacent to it. The common dictionary definition of 'adjacent' refers to meaning close or near to something. A fact and degree assessment will therefore be necessary in each case, to determine whether a fence should be regarded as adjacent to a highway.
 6. In this case the fence starts at the corner of a single storey brick outbuilding, from where it runs broadly parallel to the A167 road. It is separated from the carriageway of that road by an expanse of grass verge, with a relatively dense, maturing hedgerow directly in front of it. From the information provided, part of the grass verge constitutes highway land, however there remains a margin of some 1.5 metres where the land is within the ownership of the appellants.
 7. From my visit it was apparent that the line of the fence, subject to the notice, is set further back from the carriageway when compared with a hedgerow and shorter post and rail fence continuing south-eastwards. Furthermore, to the north the intervening grass verge gradually gives way to a gravelled surface outside the aforementioned outbuilding. Therefore despite being in line with the forward elevation of the outbuilding, the subject fence has the appearance of being set comparatively further back in relation to the carriageway.
 8. In addition the maturing hedge in front of the fence constitutes a substantial intervening feature. I consider that the presence of the hedge, even allowing for seasonal leaf fall, together with the more dominant exterior of the adjoining outbuilding, serve to give the fence a recessive appearance in the street scene, such that the fence does not tend to draw the eye as an imposing boundary feature. Even though the fence is likely to prevent trespass onto areas of land in the appellants' ownership, the hedge, rather than the fence, is more likely to be perceived as marking the boundary of the appellants' property with the highway.
 9. Drawing the above considerations together, and as a matter of fact and degree, it seems to me that the separation of the fence from the carriageway, combined with the character of its surroundings, gives the impression that the structure is not situated close to and therefore adjacent to the highway. The fence would therefore constitute permitted development in the context of the GPDO.
 10. In support of its case the Council has referred me to an appeal decision where a series of fences were regarded as being adjacent to, despite being set back to a degree from, the respective highway in question¹. From the appeal decision letter I have only limited details of that case. However, it appears to me that despite the fences in question being similar in height to the one in this case, they were nevertheless regarded as being stark in appearance and perceived as separating the land from the highway. I therefore consider that there are distinguishing features which mean that it does not automatically follow that I should reach the same conclusion in this case.

¹ Appeal ref APP/A2470/C/17/3172568

Conclusion

11. For the reasons given above I conclude that the appeals should succeed on ground (c). Accordingly the enforcement notice will be quashed. In these circumstances the appeals under grounds (f) and (g) do not need to be considered.

Formal Decision

12. The appeals are allowed and the enforcement notice is quashed.

Roy Merrett

INSPECTOR