



Appeal Decisions

Site visit made on 29 May 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25TH JUNE 2020

Appeals A and B: APP/D0121/C/19/3242148 & 3242149 24 Highbury Road, Weston-Super-Mare, BS23 2DN

- 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 Mrs Julie Lane (Appeal A) and Mr Peter Lane (Appeal B) against an enforcement notice issued by North Somerset Council.
 - The enforcement notice, numbered 19/00044/UAW, was issued on 25 October 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a fence to the western boundary.
 - The requirements of the notice are:
 1. Remove the fence on the western Boundary.
 2. Remove all resulting materials from the land.
 - The period for compliance with the requirements is four weeks from when the notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B was proceeding on the grounds set out in section 174(2)(a) and (d) of the Act. Since the prescribed fees have not been paid within the specified period, the appeal in ground (a) and the application for planning permission deemed to have been made under s177(5) of The Act as amended, have lapsed. Accordingly, Appeal B is proceeding only on the ground set out in section 174(2)(d) of the Act.
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Summary Decision

1. Both Appeal A and Appeal B are allowed and the enforcement notice is quashed.

Procedural Matters

2. Whilst the address stated on the enforcement notice is 24 Highbury Road, the appellants' address is given on the appeal form as No 24B. Notwithstanding this, having noted the position of the fence on the site, I am satisfied that the notice is correct with regard to the land to which it relates.
3. I note that the appeal form indicates that the appeals have initially been made under ground (a) only. However, the facts provided to support the appeal also relate to a ground (d) appeal. This was brought to the appellants' attention early in the appeal process. The appellants subsequently confirmed that the appeal was also being brought under ground (d). The Council were advised of this and have had the opportunity to comment on the matters raised by the appellants under this additional ground. Accordingly, I am satisfied that no

injustice has been caused by the consideration of the ground (d) appeal in this case.

4. In addition to the above, the appellants also say that the fence subject of the enforcement notice replaces a previous fence in this location. Whilst works to maintain, improve or alter an existing enclosure might well be permitted¹, the wholesale replacement of the previous form of enclosure is not. I have not, therefore, considered a hidden appeal under ground (c) (i.e. that there has not been a breach of planning control) and have only considered the appeal on the basis of grounds (a) and (d).

Ground (d)

5. The enforcement notice is directed at a timber fence that has been constructed along the boundary of the site shared with the adjoining highway. The main issue in this case is whether the appellants have demonstrated that, on the balance of probability, the fence was constructed more than 4 years prior to the issue of the enforcement notice.
6. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellants must show that the development was substantially completed on the date four years before the notice was issued. The test in this regard is the balance of probability and the burden of proof is on the appellants.
7. The appellants confirm in their appeal form that the fence was constructed in replacement of a previous fence some 4 to 5 years ago. In correspondence to the appellant a resident of Weston confirms that the fence surrounding the appellants' house has been in place for 5 years. Mr Peter Lane's brother confirms that he assisted Mr Lane in replacing the fence at the appeal site in mid to late summer 2014. He describes in some detail the work involved in replacing the fence, and recalls that this was done over the course of one weekend.
8. Whilst I acknowledge that the dates given by the above parties for the erection of the fence cover a period from the summer of 2014 to late 2015, none of the dates fall less than 4 years prior to the issue of the enforcement notice.
9. The Council contends that the appellants have not provided any detailed evidence to support the claims made. However, it has not suggested that the evidence provided is incorrect or that it is unreliable. The lack of a response to the Planning Contravention Notice issued by the Council does not cast any doubt over the appellants' claims during this appeal. Indeed, I consider the confirmation provided by Mr Adrian Lane to be most convincing because of the details he provides. Furthermore, the evidence of the appellants and the neighbour is not contradictory, but corroborative.
10. The Council has not provided any evidence of its own to contradict that of the appellants or make their version of events less than probable. Accordingly, I am satisfied that on the balance of probability the fence was substantially

¹ E1(a) Class E of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015

completed more than 4 years prior to the issue of the enforcement notice. The appeals under ground (d), therefore, succeed.

Conclusion

11. For the reasons given above I conclude that the appeals should succeed on ground (d). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under ground (a) set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Formal Decision

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

J Moss

INSPECTOR