
Appeal Decisions

Site visit made on 9 June 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 July 2020

Appeal A: APP/X4725/C/20/3246010

Appeal B: APP/X4725/C/20/3246011

53 Wesley Street, Ossett WF5 8EU

- 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 Alex Booth (Appeal A) and Dr Louise Warwick-Booth (Appeal B) against an enforcement notice issued by City of Wakefield Metropolitan District Council.
 - The enforcement notice was issued on 28 January 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the development of fence panels and posts over 1 meter [sic] high adjacent to the highway on the Land.
 - The requirements of the notice are to remove the unauthorised fence from the existing stone boundary wall fronting Wesley Street.
 - The period for compliance with the requirements is within 1 month of the date on which the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeals A and B - Decision

1. The appeals are dismissed and the enforcement notice is upheld.

The appeals on ground (f)

2. For the appeals to succeed on this ground, it must be demonstrated that the steps required to comply with the notice are excessive and that lesser steps could overcome the breach of planning control alleged in the notice.
3. The fence is 1.2m high, measured by the appellants, and is attached to the rear face of a stone boundary wall approximately 1.3m high abutting the footway of Wesley Street. The wall and fence therefore form a combined structure approximately 2.5m high, as indicated on plans provided by the appellants, with a raised bed approximately 1m high immediately behind.
4. I understand the appellants' concern that removal of the fence would be excessive, and that they wish to know if changes in its height or its materials, or painting it would make it acceptable to the Council. While it is not possible to broker agreement by means of an appeal, and specific lesser steps that could be set out in a varied notice have not been advanced, I have considered whether a reduction in the height of the fence could remedy the breach alleged in the notice. However, as the wall already exceeds 1m in height, planning permission would be required to retain any part of the fence that is higher than

the wall and an appeal on ground (a), that planning permission should be granted, is not before me. Consequently, it is not possible to specify an alternative height by means of the ground (f) appeals.

5. While it would be possible to vary the notice to require the fence to be reduced in height to be no higher than the wall, any remaining parts of the fence would serve no practical purpose. I see no benefit to the appellants in making such a variation.
6. It has not been explained how alternative materials could be introduced and I do not see how it could be done, other than by taking the fence down and erecting another in its place. As the new fence would be a different development of uncertain design, it cannot be specified by means of a variation to the notice. Furthermore, no alternative materials or paint colour have been specified and therefore a variation of the requirements of the notice in either regard would introduce unacceptable uncertainty as to what should be done in order to comply with it.
7. Accordingly, the appeals on ground (f) should not succeed.

The appeals on ground (g)

8. In order to succeed on this ground, the appeals must demonstrate that the period for compliance with the requirements of the notice, 1 month after it takes effect, falls short of what should reasonably be allowed.
9. The fence was erected by a contractor and the appellants consider its removal would require similar professional attention. While I understand the fence is bolted to a retaining wall that has weathered at the base, evidence to demonstrate why removal might damage or risk the collapse of the wall has not been presented. Furthermore, while it is stated that the contractor that erected the fence has an extremely busy schedule, it has not been suggested that another contractor could not remove it. Consequently, and even allowing for the need to avoid damage to nearby protected trees, 1 month is a reasonable period to remove a structure that was erected over a 5-day period.
10. In view of the drop from the raised bed to the footway in Wesley Street the removal of the fence gives rise to understandable concern on the part of the appellants. They indicate that new planting to replace the fence would take at least a year to provide the safety their family needs. However, it has not been shown that alternative or interim arrangements that would provide an appropriate level of security cannot be implemented.
11. Accordingly, the appeals on ground (g) should not succeed.

Conclusions

12. For the reasons given above, I conclude that the appeals should not succeed. I have upheld the enforcement notice.

Mark Harbottle

INSPECTOR