The Planning Inspectorate

Appeal Decision

Site visit made on 21 July 2020

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2020

Appeal Ref: APP/P0119/C/19/3238334
2 St Anne's Drive, Wick, Bristol

- 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 James Iveson against an Enforcement Notice (EN) issued by South Gloucestershire Council.
- The enforcement notice was issued on 23 August 2019.
- The breach of planning control as alleged in the notice is the erection of a wooden fence in excess of 2 metres in height in the approximate location marked green on the attached plan.
- The requirement of the notice is to remove the wooden fence and its constituent materials from the land.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Decision

1. The appeal is dismissed and the EN is upheld.

The Notice

2. I saw that the fence does not extend along the boundary with 35 Milford Avenue for as far as the green line indicating the position of the fence on the plan attached to the EN. However, the EN refers to the "approximate location" of the fence being marked in green and it is clear to me and the appeal parties that it is the fence as it is on site which is the subject of the EN. Therefore, in the round, this is a minor matter. The EN does not need correcting

Main Issue

3. An appeal under s174(2)(c) of the 1990 Act is based on the claim that the matters alleged in the notice, which in this case is a wooden fence, do not constitute a breach of planning control. There is no place under this ground to consider any other matters such as the planning merits of the fence. The burden to make out the case that the erection of the fence is not a breach of planning control rests with the appellant.

Reasons

4. S55 of the 1990 Act defines what constitutes development. The fence falls within that definition in terms of it being operational development. S57 of the 1990 Act sets out that planning permission is needed for development. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) does grant planning permission for the erection of fences subject to certain conditions and limitations. Relevant to the appeal fence, the development is not permitted if the height of the fence would exceed 2 metres above ground level.

5. I appreciate that ground levels at the appeal house may have changed over time and there is a step down from the land at 35 Milford Avenue. I also note that when the former greenhouse was erected in the northwest corner of the garden it was apparently dug down so as not to overlook the house at 4 St Anne's Drive. However, I note from the appellant's aerial photograph that next to the greenhouse there appears to be one or two green compost bins. In one of the Council's photographs those composters, or ones very similar, seem to be in the same position next to what appears to be a broken up concrete base where the greenhouse used to be. The ground around is grassed and seems otherwise undisturbed.

6. The same Council photograph shows the new fence set up on wooden posts which are now buried in soil retained by a new block wall with coping stones that roughly match the line of the wooden horizontal gravel board to the fence. The fence was erected before the block wall. Given that the main part of the fence from the lower edge of the gravel board to the top is about 1.8m and taking account of the depth of the posts below the new ground level created by the wall, it is clear that when the fence was erected it exceeded 2m above the ground level which it was built off.

7. Despite all the appellant's other comments, the photographs referred to are telling evidence which lead me to conclude that, as a matter of fact and degree, the fence exceeds the limitations for a fence that has been granted planning permission by the GPDO. Consequently, in the absence of planning permission for the matter alleged in the EN, there has been a breach of planning control.

8. Consequently, I conclude that the appeal should fail and the EN should be upheld.

Gareth Symons

INSPECTOR