



Appeal Decision

Site visit made on 3 August 2020

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 August 2020

Appeal Ref: APP/W1525/C/20/3244170

11 The Ryle, Writtle, Chelmsford, Essex CM1 3JQ

- 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 Mr David Stevens against an enforcement notice issued by Chelmsford City Council.
 - The enforcement notice was issued on 2 December 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a fence.
 - The requirements of the notice are:
 - i) Demolish the fence shown outlined in blue at the approximate location on the plan attached to the notice.
 - ii) Remove from the land all material and debris resulting from the action taken at step i).
 - iii) Restore the land affected by the works carried out at steps i) and ii) by seeding with grass seed.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f)&(g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is varied by substituting 3 months as the period for compliance. Subject to that variation the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

2. No 11 is a residential property located on the corner of The Ryle and Long Brandocks. The enforcement notice is directed at fencing erected at the frontage of the property without the benefit of planning permission.
3. A retrospective planning application for the 2m high fence to the boundary was refused by the Council on 3 August 2018 under Council ref: 18/01061/FUL.
4. There followed a planning application to retain the fencing but with the rear corner repositioned and angled to provide a visibility splay for the neighbouring dwelling at No 45 Long Brandocks. This overcame one of the Council's reasons for refusal concerning the effect on highway safety for pedestrians. The application introduced a proposal to plant a hedge in front of the fence. The application was dismissed on appeal in a Decision dated 2 March 2020¹ by reason of the harm to the character and appearance of the area.

¹ Appeal ref: APP/W1525/D/19/3241471

5. When the enforcement notice was issued the fence followed the side boundary line with No 45. By the time of my visit this section of fencing had been angled as per the appealed application described above.

Reasons

The appeal on ground (f)

6. The ground of appeal is that the steps required by the notice to be taken are excessive.
7. Under ground (f) I am invited to consider three other options not previously put before the Council or previous Inspector. Option 1 is to retain a 2m high fence but relocated 1m back from the footway. Option 2 is to retain the fence in its current position but lower it to 1m in height. Option 3 is to relocate the fence 1m back from the footway and to reduce its height to 1m.
8. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)). The purpose of the requirements constrains the way ground (f) can be argued, particularly where the planning merits are not being considered. Therefore, it is necessary to firstly establish the purpose of the notice.
9. The notice requires complete removal of the fencing rather than a reduction in its size or another modification. The requirements of the notice therefore go beyond remedying an injury to amenity. It follows that the purpose of the notice must be to remedy the breach by restoring the land to its former condition before the breach took place.
10. The Courts have made it clear that where there is an appeal on ground (f) but, no ground (a) appeal and the purpose of the notice is to remedy the breach, the power of an Inspector in s176(1)(b) of the Act to vary the notice to under-enforce is limited. General planning considerations or arguments about amenity cannot be entertained.
11. Therefore, the alternative options for modified schemes put forward cannot be considered in the absence of a ground (a) appeal. It would be outside the remit of this appeal for me to consider the planning merits of any alternative scheme. The lesser steps suggested would not remedy the breach of planning control.
12. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) and (b), it is not excessive. Nothing in the requirements prevent the appellant from doing what he is lawfully entitled to do in the future after he has complied with the notice.
13. The ground (f) appeal must fail.

The appeal on ground (g)

14. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed.
15. The appellant initially argued that the period for compliance expires before the outcome of his planning appeal is likely to be known. However, the effect of his

appeal against the enforcement notice is to stop the clock. The notice only takes effect on the date of this appeal decision which is when the compliance period starts. The appeal against the refusal of planning permission has been dismissed already.

16. The appellant seeks a compliance period of 4 months rather than the 2 months afforded by the notice. I acknowledge that the appellant was not obliged to put measures in place for the removal of the fence pending the outcome of his enforcement appeal. It is suggested that the time limit would place the family in financial hardship or unnecessary stress although no further elaboration is given apart from reference to the COVID-19 pandemic. No details are given over how that has impacted upon the appellant's ability to comply with the notice. However, I accept that there is ongoing uncertainty about what restrictions might be in place at any one time.
17. In light of the circumstances I consider that there is justification for a short extension to 3 months which strikes the right balance between affording a reasonable period for compliance whilst addressing the ongoing breach and harm from the unauthorised development in a timely manner.
18. To that limited degree the ground (g) appeal succeeds.

KR Seward

INSPECTOR