The Planning Inspectorate

Appeal Decision

Site visit made on 4 August 2020

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 7th October 2020

Appeal Ref: APP/D0121/C/20/3246774
Flat 2, 37 Arundell Road, Weston-Super-Mare, BS23 2QH

- 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 Mrs Mary Elliot against an enforcement notice issued by North Somerset Council.
- The enforcement notice, numbered 19/00031/OTH, was issued on 6 January 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a fence.
- The requirements of the notice are:
  1. Remove the fence from the front and side of the property.
  2. Remove all resulting materials from the land.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) 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.

Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. The appeal form shows that the appeal was made under grounds (a), (d) and (f). The appellant has confirmed that this was a mistake and the grounds of appeal are (a), (c) and (f). I have given the parties opportunity to make further comment and determined the appeal accordingly.

The Ground (c) Appeal

3. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control.

4. Article 3 and Schedule 2, Part 2, Class A of the GPDO[1] grant planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. It is the appellant's case that the alleged works amount to an improvement and alteration of a fence and are therefore permitted development (PD).

[1] The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

5. However, the appellant confirms that the fence panels and posts adjacent to Bristol Road Lower were replaced in August/September 2018 whilst the panels fronting onto Arundell Road were replaced in September/October 2018, save for the two closest to the driveway. The appellant does not clarify whether the fence posts along Arundell Road have been replaced but, either way, the fence as a whole must be considered as a single structure and it has been substantially replaced.

6. In support of her argument that the works amounted to an alteration, the appellant has referred to *Shimizu (UK) Ltd v Westminster CC* [1997] 1 WLR 168 – but that does not assist her that because the case concerned works to a listed building. Their Lordships found that the definition of building set out in s336(1) of the Town and Country Planning Act 1990 (TCPA90) has no relevance to the Planning (Listed Building and Conservation Areas) Act 1990 and, strictly on that basis, that the demolition of part of a listed building is to be regarded as the alteration of the building rather than wholesale demolition.

7. The appeal site lies within the Greater Weston Conservation Area but the fence is not a listed building or within the curtilage of one. S196D(3) of the TCPA90 defines 'relevant demolition' as the 'demolition of a building that is situated within a conservation area in England'. The meaning of 'building' in this context is as set out in s336(1) of the TCPA90: 'any structure or erection and any part of a building'. A fence is a building for the purposes of s336(1) of the TCPA90; and *Shimizu* is not relevant.

8. The photographic and other evidence suggests that the extent of the works carried out to the combined length of enclosure to Bristol Road Lower and Arundell Road, compared to the very modest amount of retained fencing at its northern end, go beyond what can reasonably be described as an improvement or alteration. I find that, as a matter of fact and degree, the operations amounted to the demolition of the pre-existing fence, which was 'not granted permission by Part 2, Class A of the GPDO and the erection of a new fence as alleged. That the works took place in two stages, a matter of weeks apart, does not alter my findings.

9. However, it does not matter whether the works amounted to the erection or alteration of the fence. Paragraph A.1(a)(ii) provides that development is not permitted by Part 2 Class A if the height of a fence erected adjacent to a highway used by vehicular traffic would exceed 1m above ground level. Moreover, paragraph A.1(c) does not permit the alteration of a fence in such a position if it, as a result of the alteration, would exceed its former height or 1m.

10. Although the appellant argues that the new panels are no higher than those they replaced, this isn't borne out by the photographs, which suggest that the alleged fencing along Arundell Road is, at least in part, higher than that which previously existed *and* more than 1m above ground level.

11. I conclude that the appellant has not demonstrated that the alleged erection of a fence was not in breach of planning control on the balance of probabilities. The appeal on ground (c) fails.

The Ground (a) Appeal

Main Issue

12. The main issue is the effect of the fence on the character or appearance of the Greater Weston Conservation Area (the Conservation Area).

Reasons

13. No 37 Arundell Road comprises a large, Victorian house which has been converted into flats. The property is situated on the corner with Bristol Road Lower and falls within the Hillside Character Area of the Conservation Area, which is a 'heritage asset' for the purposes of the National Planning Policy Framework (the NPPF). The timber close boarded fence sits behind and above a stone boundary wall which combine to enclose the front and side garden area of the appellant's home, Flat 2.

14. The special interest of Hillside is largely derived from its stone Victorian houses and villas set on the slopes of Worlebury Hill. The Council's Character Appraisal and Management Plan[2] highlights that stone boundary walls are a distinctive component of this part of the Conservation Area, meaning that they contribute to the significance of the heritage asset. This largely reflects my own observations of the boundary treatments in this part of Hillside, which in many cases also incorporate soft landscaping.

15. The Council's Character Appraisal and Management Plan highlights that the loss of boundary walls and inappropriate boundary treatments as an issue affecting the Hillside Character Area. The original stone boundary wall is still present on the site but that is not enough to make the appeal fence acceptable.

16. The photographs show that the pre-existing timber fence was, in part, lower in height than the appeal structure; it also visibly comprised a series of panels and it was largely obscured by vegetation along much of its length so that it at least had a more recessive and muted appearance. The appeal fence is designed so that none of the posts are visible from the street and it appears from there as a solid and continuous timber barrier.

17. By reason of its height, length and form, it appears as a dominant and incongruous feature which detracts from the character and appearance of the boundary wall below. Indeed, on Arundell Road, the fence is higher than the original feature stone pillars and runs across the blocked up pedestrian access, thereby diminishing what should be primary features in the boundary treatment and accentuating what appears as an odd arrangement. Moreover, the fence is not in-keeping with and detracts from the stone Victorian house behind it.

18. The appellant has drawn my attention to other timber fences erected above stone walls within the Conservation Area. The most notable examples are the adjoining fence of Flat 1 and at No 35 Arundell Road – and the Council has confirmed that these developments were not granted planning permission, although they have become immune from enforcement action. The former fence is noticeably higher than that subject to this appeal and in my view it is not a good example to follow. The fence at No 35 is at least largely obscured by vegetation.

[2] Greater Weston Conservation Area Character Area Appraisal and Management Plan for Hillside

19. I find that the alleged fence is harmful to the character and appearance of the site and street scene. It fails to preserve or enhance the character or appearance of the Conservation Area and thereby causes less than substantial harm to the significance of the heritage asset. The NPPF expects that great weight is given to the conservation of heritage assets but also that 'less than substantial harm' is weighed against any public benefits that might arise from the development.

20. The appellant has described, and I saw that her front garden and therefore flat stand at a higher level than the highway. I appreciate that she feels exposed in her home, and she erected the fence to improve her privacy and feelings of security. I have also noted that she is older or elderly and may need to live on the ground floor as well as in a flat that is safe. I have great sympathy for her situation.

21. However, the appellant has not shown that there is no alternative to the appeal fence as a means for her to have peace of mind, or to ensure that her flat provides suitable living conditions in posterity. She has not explained why other concerns for privacy and security could not be addressed by other measures such as planting hedges in the front garden and/or CCTV which could be expected to preserve the character and appearance of the Conservation Area. This being the case, the public and private benefits do not justify the harm caused by the fence or prevail over the great weight that should be given to the conservation of the heritage asset.

22. I conclude that the fencing fails to preserve or enhance the character or appearance of the Greater Weston Conservation Area. It conflicts with Policies CS5 and CS12 of the North Somerset Core Strategy (CS), Policies DM3 and DM32 of the North Somerset Development Management Policies Sites and Policies Plan Part 1, the Conservation Area Character Appraisal and Management Plan and the NPPF – which seek to ensure that new development does not cause unacceptable harm to the character and appearance of conservation areas, and heritage assets are conserved in a manner appropriate to their significance. Moreover, it has not been shown that the development is necessary to meet the needs of an ageing population in accordance with CS Policy CS26.

23. I find that a refusal of planning permission is necessary and proportionate in the circumstances. The appeal fails on ground (a).

The Ground (f) appeal

24. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. In this case, the breach of planning control is the erection of a fence and the requirements are to remove it and all resulting materials from the land. The purpose of the enforcement notice must therefore be to remedy the breach.

25. The appellant argues that it is excessive for the notice to require the removal of the fence; a more reasonable approach would be to require the fence to be reduced to one metre in height above the level of the garden, as this would be permitted development.

26. However, reducing the fence to 1m would not remedy the breach of planning control because the GPDO does not grant retrospective permission. Moreover, since the GPDO expressly limits the height of permitted fencing to 1m above ground level where it is adjacent to a highway used by vehicular traffic, the reference point for height should be taken as the highway, rather than land levels within the site. The height of the wall is such that a fence that stands 1m above the garden would not be PD.

27. The appellant has not shown that there are any lesser steps that would remedy the breach of planning control. The requirements of the notice are not excessive and the appeal on ground (f) must fail.

Conclusion

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Richard S Jones

INSPECTOR