



Appeal Decisions

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 A Ref: APP/D0121/C/20/3244559

7 Eastcombe Road, Weston-Super-Mare, BS23 2TQ

- 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 Helen Wadey against an enforcement notice issued by North Somerset Council.
 - The enforcement notice, numbered 19/00053/UAW, was issued on 29 November 2019.
 - 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 to remove the fence and 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)(c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/D0121/W/20/3244556

7 Eastcombe Road, Weston-Super-Mare, BS23 2TQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Helen Wadey against the decision of North Somerset Council.
 - The application Ref 19/P/1259/FUH, dated 22 May 2019, was refused by notice dated 8 November 2019.
 - The development proposed is a replacement fence (retrospective).
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Decision

Appeal A

1. It is directed that the enforcement notice is varied by the insertion of the word 'panels' between the words 'fence' and '(indicated' in paragraph 5.1.
2. Subject to the variation, Appeal A is dismissed and the enforcement notice is upheld.

Appeal B

3. Appeal B is allowed and planning permission is granted for a replacement fence (retrospective) at 7 Eastcombe Road, Weston-Super-Mare, BS23 2TQ, in accordance with the terms of the application Ref 19/P/1259/FUH, dated 22 May 2019.

Preliminary Matters

4. Appeals A and B relate to the same fence, which enclose a dwelling located on the corner of Eastcombe Road and Cecil Road. The appellant states that at the same time as extending the dwelling in 2012, ground levels within the site

were raised and a boundary wall constructed with fencing above. For the avoidance of doubt, the extension, ground works and wall are not subject to the enforcement notice and Appeal A, or the planning application and Appeal B.

5. I have decided, as set out above, to grant planning permission for the alleged fence under Appeal B. Nonetheless, it is still necessary for me to determine Appeal A. Under s180 of the Town and Country Planning Act 1990 (the 1990 Act), the permission granted shall override the enforcement notice and the notice shall cease to have effect so far as it is inconsistent with the permission.

Appeal A on Ground (c)

6. For the appeal to succeed on ground (c), the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged erection of a fence did not constitute a breach of planning control. Consideration of ground (c) involves a two-stage process: whether the matters constitute development that requires planning permission – and, if so, whether the development already benefits from a grant of planning permission.
7. In order to consider whether the erection of the fence was ‘development’, it is necessary to look at the 1990 Act. S55(1) of the Act defines development as including the carrying out of ‘building operations’ – and the word ‘building’ is defined by s336 of the 1990 Act as including any structure or erection and any part of a building.
8. Having regard to its extent, permanence and physical attachment, the fence amounts to a building for the purposes of the 1990 Act¹. This is not a controversial conclusion; that the erection of a fence may be ‘permitted development’ (PD) as described below indicates that this is normally development that requires planning permission.
9. However, the appellant’s case is that she did not erect a wholly new fence; rather, she changed the panels in a pre-existing fence but the left posts in situ. She therefore argues that the works did not require permission because s55(2)(a) of the Act excludes from the definition of development the carrying out of works for the maintenance, improvement or other alteration of any building which do not materially affect its external appearance.
10. I accept that the original posts were not moved; that much is clear from photographs as well as letters from two of the appellant’s neighbours and the partner of a now dissolved property maintenance company who confirms that ‘the original fence posts and back braces were used to mend the fencing’. However, the photographs also suggest that the previous willow hurdle fence panels were relatively lightweight with a degree of visual permeability and no back bracing. By contrast, the new fence panels are formed of solid braced timber.
11. When the fence is viewed from the street, the panels are by far the greatest constituent part, and, as such, largely dictate its overall appearance. From inside the garden, the posts are not even visible and the fence takes on a single continuous form. As a matter of fact and degree, I find that the works carried out materially affected the external appearance of the fence and are not

¹ A fence is excluded from the definition of building for the purposes of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) – the GPDO – but it is the definition in the 1990 Act which must be applied when considering whether the alleged fence is development for the purposes of the Act.

shown to be exempt from the definition of development on the balance of probabilities.

12. The appellant makes no case that that planning permission is otherwise not required or has already been granted for the fence. For completeness, I note that planning permission is granted by Article 3 and Schedule 2, Part 2, Class A of the GPDO for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. However the alleged fence cannot be PD because it is situated adjacent to a highway used by vehicular traffic and it is more than 1m high, not least because of the height of the wall that it stands upon, in breach of Part 2, paragraph A.1 of the GPDO.
13. I therefore conclude that the appellant has not demonstrated, on the balance of probabilities, that the matters alleged in the notice are not in breach of planning control. The appeal on ground (c) fails.

Appeal A on Ground (d)

14. An appeal against an enforcement notice on ground (d) is a claim that the alleged breach of planning control is immune from enforcement action due to the passage of time. In order to succeed on ground (d), it is for the appellant to demonstrate, once again on the balance of probabilities, that the operational development was substantially complete four years before the date of the enforcement notice. The material date in this case is 29 November 2015².
15. The appellant has provided estate agent photographs from January 2014 and 10 November 2015, which demonstrate that the pre-existing willow hurdle fence was in place around the perimeter of the appeal property on those dates. However, the appellant acknowledges that the replacement of the willow hurdle with solid timber panels took place in October 2017 and I have found that the works amounted to development which required planning permission.
16. I therefore conclude that the appellant has failed to demonstrate, on the balance of probabilities, that the alleged erection of a fence was substantially complete four years prior to 29 November 2015. It was not too late for the Council to take enforcement action when it did and the appeal on ground (d) does not succeed.

Appeal A on Ground (f)

17. 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 – which, under s173(4) of the 1990 Act, shall be to remedy the breach of planning control or to remedy any injury to amenity.
18. The breach of planning control in this case is the erection of a fence and the requirements of the notice are to remove the fence and remove all resulting materials from the land. The purpose of the enforcement notice must therefore be to remedy the breach. For this reason, and since I shall consider the merits of the fence under Appeal B, my deliberations for ground (f) are restricted to whether the requirements exceed what is necessary to remedy the breach.
19. The appellant's case is the notice should be varied to allow the fence to be reduced in height to 1m and then retained. She suggests that this measure

² s171B(1) of the Town and Country Planning Act 1990

would reflect her 'fall-back position' of erecting a fence of that height as PD. However, reducing the fence would not remedy the breach of planning control because the GPDO does not grant retrospective permission. Moreover, I have found that a 1m fence on top of the site boundary wall would not be PD.

20. The appellant has not suggested any other lesser steps but, given my findings on ground (c), I find that it would be appropriate to vary the notice so that it only requires the removal of the 'fence panels'. Otherwise, the appeal on ground (f) must fail.

Conclusion on Appeal A

21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Appeal B

Preliminary Matters

22. I have changed the description of development from that specified on the application form to exclude subjective matters.

Main Issue

23. The main issue is the effect of the fence on the character and appearance of the site and its surroundings, with regard to the setting of the Greater Weston Conservation Area.

Reasons

24. The fence encloses a spacious front/side garden of a dwelling located on the corner of Eastcombe Road and Cecil Road. It sits above a rendered retaining wall, the top of which roughly equates to the raised level of the garden. The site is located outside of but adjacent to the Conservation Area boundary.
25. The properties along Cecil Road are, in the main, defined by stone walls, blockwork walls and other types of concrete based products. Many also incorporate soft landscaping but there are a number which incorporate timber fencing. Because land levels rise from the northern side of the road and fall from the southern side, there is great deal of variation in the height of those boundary treatments. Moreover, as the dwellings on the northern side of the road are mainly set above road level, there are also a number of high and prominent tiered enclosures within the front garden areas, including one that is timber and seen in conjunction with the appeal site.
26. Many of the dwellings on the southern side of the road are situated below road level but nonetheless present high walled enclosures to the back of the footway, as well as occasional garages. There is also a considerable variety to the type, size and design of dwellings on both sides of the road.
27. Whilst the appeal fence has a clear and obvious presence, due its exposed location on a corner site and on top of a wall, it does not appear unusually high or incongruous within this context.
28. Eastcombe Road slopes down from the appeal site and falls within the Conservation Area. Its coherent character is reflective of the area's special interest, which is largely derived from its hillside setting and its stone Victorian

houses and villas. Although I observed a property at the southern end of the road which incorporates timber fencing, the frontages along Eastcombe Road are largely characteristic of the Conservation Area, comprising stone boundary walls with soft landscaping above or behind.

29. The fence at the appeal site contrasts with those traditional frontages and due to its elevated position towards the top of the hill, can be seen in combination with them. However, I was only able to see fence in its entirety at the top of the road, where the in-combination views with the Conservation Area are limited. Further down the street, significant parts of the fencing are obscured and – where it is visible – it is seen primarily in the context of the appeal site dwelling and retaining wall, which are not characteristic of the Conservation Area. Moreover, the dark finish to the fence helps it assimilate with its largely green, wooded backdrop.
30. For these reasons, I conclude that the appeal fence has a neutral effect on the setting of the Conservation Area, thereby preserving the same, and causes no unacceptable harm to the character and appearance of the site and its surroundings. It does not conflict with Policy CS12 of the North Somerset Core Strategy, Policy DM32 of the North Somerset Development Management Policies Sites and Policies Plan (Part 1) or the North Somerset Residential Design Guide Supplementary Planning Document which seek to ensure a high quality design of buildings and places throughout the district.

Other Matters

31. I have had regard to the appellant's submissions that the fence is required to ensure privacy and safety in her garden. I do not need to consider this matter since I have found the fence acceptable on the main issue. I have found that the appellant has no fallback position of erecting a fence as PD but that does not alter the lack of harm caused by the fence as it is.

Conditions

32. Neither the Council nor any other party has suggested that conditions ought to be imposed on any grant of permission, and I find no conditions to be necessary.

Conclusion on Appeal B

33. For the reasons given above, and having regard to all other matters raised, I conclude that Appeal B should be allowed.

Richard S Jones

INSPECTOR