
Appeal Decision

Site visit made on 3 November 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Appeal Ref: APP/Z2830/C/20/3258035

Land adjacent to 11 Furnace Lane, Nether Heyford NN7 3JS

- 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 R Swingler against an enforcement notice issued by South Northants District Council.
- The enforcement notice was issued on 15 July 2020.
- The breach of planning control as alleged in the notice is the erection of Fence/s over 1m in height adjacent to a highway to the frontage of Land Adjacent to 11 Furnace Lane. The fences are located facing onto Furnace Lane & Hillside Road.
- The requirements of the notice are: -
 - i. Dismantle the Fence(s) fronting onto Hillside Road and Furnace Lane and remove the constituent elements from the site. Or
 - ii. Reduce the height of the fence(s) and make good to a maximum remaining height of 1.0m and remove the constituent arisings from the site.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act). 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 1990 Act.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
2. I observed at my site visit that there are a number of fences and a set of double gates within the appeal site that are in excess of 1 metre in height adjacent to the highway. As such, I consider that there could be uncertainty as to which fence/fences and/or gates the breach of planning control within the enforcement notice relates to. Therefore, I requested the Council's comments on what corrections would be required to the notice, in its opinion, to make it clear which fence/fences/gates the enforcement notice relates to.
3. The Council provided a copy of a plan with blue lines marked on it together with photographs of the fences/gates and stated that the requirements of the notice could be corrected to state: -

'i. Dismantle all of the Fence (s) and gates fronting onto Hillside Road and Furnace Lane as shown on the appended plan (appendix 1) and shown in the

appended photographs (appendix 2) and remove the constituent elements from the site. Or

ii. Reduce the height of the fence (s) and gates to a remaining height of no more than 1m and make good. Remove the constituent arisings from the site.'

4. However, I do not consider that there is a need for both the plan and the photographs to be appended to the enforcement notice. As such, I intend to only attach a copy of the appended plan to the enforcement notice. I also consider that the wording of the description of the alleged breach needs to reflect that of the requirements.
5. I therefore intend to add the wording '*and gates*' between the words '*Fence/s*' and '*over*' in the first sentence of the description of the alleged breach. I also intend to add the wording '*/gates*' between the words '*fences*' and '*are*' in the second sentence of that description and add the following wording to the end of that sentence '*(in the approximate locations of the blue lines as shown on the appended plan)*'. Based on the evidence before me it is clear that the appellant considers that the enforcement notice affects the 2 sections of fencing and the double gates. I consider that I can carry out these corrections without injustice to either party.
6. I intend to delete the wording of both requirements and the wording I intend to replace it with differs to that suggested by the Council for the following reasons. The wording '*that are in the approximate locations of the blue lines*' is to be added to ensure clarity. I also consider that for clarity the reduction in height should refer to '*above ground level*' in requirement ii. Therefore, I intend to add in that wording to that requirement. Moreover, requirements should not be based on subjective judgements and whether something is '*made good*' is subjective. As such, I intend to delete the words '*make good*' in requirement ii.
7. Taking into account all of the above I intend to delete the wording of requirements i. and ii. replace it with: -

i. Dismantle all of the fence(s) and gates fronting onto Hillside Road and Furnace Lane that are in the approximate locations of the blue lines as shown on the appended plan and remove the constituent elements from the site. Or

ii. Reduce the height of all of the fence(s) and gates fronting onto Hillside Road and Furnace Lane that are in the approximate locations of the blue lines as shown on the appended plan, to a remaining height of no more than 1m above ground level. Remove the constituent arisings from the site.'
8. I consider that I can carry out these corrections without injustice to either party.

Procedural Matters

9. The evidence before me indicates that the South Northamptonshire Local Plan (Part 2) (LP) has been recently adopted and now forms part of the development plan. The Council has stated that the relevant LP Policies are SS2 and SDP1. The parties are aware of, and have had the opportunity to comment on, this information and they are not therefore prejudiced by my

consideration of it. It is incumbent on me to take into account the most relevant and up to date information in reaching a decision and I have therefore dealt with the appeal on this basis.

The ground (a) appeal and deemed planning application

Main Issues

10. The main issues are: -

- The effect on the character and appearance of the area;
- The effect on highway safety in respect of visibility.

Reasons

Character and appearance

11. Due to the topography Furnace Lane slopes up towards its junction with Hillside Road. The appeal site is adjacent to the junction of Furnace Lane and Hillside Road. It is located in a mainly residential area and the dwellings are largely set back from the road with landscaped front gardens and driveways. The boundary treatments are varied, but they are generally composed of low walls or fences, some have hedges above/behind, or they are wholly formed of hedging.
12. There are a few fences of a height of around 2 metres on boundaries and adjacent to paved/parking areas. Nevertheless, low boundary walls and fences are the predominant boundary treatments in the area close to the appeal site. Moreover, in combination with the landscaping of the front gardens they convey a sense of space and verdant character and appearance to the surrounding area. Grassed and landscaped areas and verges adjacent to the pavements in the locality also contribute to the verdant and spacious appearance of the wider surroundings.
13. The fencing and gates that have been erected on the appeal site are to relatively short sections of the boundaries. Nevertheless, they are clearly visible in the street scene. Paragraph 5.64 of the South Northamptonshire Design Guide (DG) states, amongst other things, that close boarded and panel fencing will not be acceptable for boundaries that are adjacent to or visible from the public realm.
14. Even though the fences and gates are set back from the pavement behind landscaped verges their height and design has resulted in them being relatively harsh and stark features in a prominent location. Moreover, the sloping topography and their positions adjacent to hedges exacerbates the visual impact of the fences and gates. As such, these parts of the boundary treatment contrast markedly with the adjacent hedges and the verdant character and appearance of much of the surrounding area. Therefore, the fences and gates are incongruous features that appreciably harm the character and appearance of the area.
15. Even if the fences and gates were to be stained or left to weather, as has been suggested, it would not mitigate the issues, highlighted above, arising from their height and design. I appreciate the appellant's desire to provide privacy and security to his property. I recognise that there is often a difficulty in achieving these aims within gardens for properties situated on corner plots,

especially where the topography is sloping, as is the case here. However, it appears to me that these aims could be achieved by enclosing a smaller area of the garden, with similar height fencing and gates that were not adjacent to the highway or by reinstating a hedge.

16. Consequently, I consider that the development harms the character and appearance of the area and therefore, in this respect, it conflicts with LP Policies SDP1 and SS2 which, amongst other things, state that new development that complies with the development plan will be required to present a high quality design that complements the distinctive local character of the area in which it is located and demonstrates compatibility and integration with its surroundings. The development also conflicts with the guidance in the DG.

Highway Safety

17. The Council considers that there is the potential for a conflict between vehicle and other highway users when exiting the land as there is no provision for visibility splays. I have taken this as a reference to the vehicular access via the gates that front onto Hillside Road. Whilst the gates are located on the boundary of the appeal site the pavement is located an appreciable distance from the gates due to the landscaped verge that is sited between the pavement and the site boundary.
18. Therefore, visibility in both directions when exiting the access extends over the landscaped verges. There is little evidence before me to indicate that the appellant has control over these verges. However, in the main the landscaping to this area is grass. In my experience, it is more likely than not that the verges are treated by the Council as forming part of the highway and consequently, the landscaping would be maintained in a similar condition for the foreseeable future. Taken with the alignment of the road this means that a good level of visibility is achievable in both directions and the pavement is, and therefore pedestrians are, some distance from the gates. As such, oncoming pedestrians and vehicles would be able to easily see a vehicle exiting the drive and vice-versa.
19. For the above reasons, I conclude that the development does not have an unacceptable impact on highway safety. As such, it complies in this respect with LP Policy SS2 which, amongst other things, states that planning permission will be granted where the development includes a safe and suitable means of access.

Other Matters

20. I note that the Council have cited the planning history of the site and potential future planning applications for the redevelopment of the appeal site. However, these points have not affected my decision, which is based on the planning merits of the development before me.

Conclusion

21. I have found that the development harms the character and appearance of the area and that it conflicts with LP Policies SDP1 and SS2 in that respect. In this case there are no material considerations which indicate that the development should be determined other than in accordance with the development plan. For these reasons, and having had regard to all other matters raised, I conclude

that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal Decision

22. It is directed that the enforcement notice be corrected by: -

- attaching a copy of the appended plan, annexed to this decision, to the enforcement notice;
- adding the wording '*and gates*' between the words '*Fence/s*' and '*over*' in the first sentence of the description of the alleged breach;
- adding the wording '*/gates*' between the words '*fences*' and '*are*' in the second sentence of that description and adding the following wording to the end of that sentence '*(in the approximate locations of the blue lines as shown on the appended plan)*';
- deleting the wording of requirements i. and ii. replace it with: -
 - 'i. Dismantle all of the fence(s) and gates fronting onto Hillside Road and Furnace Lane that are in the approximate locations of the blue lines as shown on the appended plan and remove the constituent elements from the site. Or*
 - ii. Reduce the height of all of the fence(s) and gates fronting onto Hillside Road and Furnace Lane that are in the approximate locations of the blue lines as shown on the appended plan, to a remaining height of no more than 1m above ground level. Remove the constituent arisings from the site.'*

23. Subject to these corrections the appeal is dismissed and 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.

D. Boffin

INSPECTOR



Appended Plan

This is the plan referred to in my decision dated:

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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Scale: Not to Scale

