



Appeal Decisions

Site visit made on 17 November 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th December 2020

Appeal A: APP/M4320/X/20/3255193

The Ainsdale Club, 772A Liverpool Road, Ainsdale PR8 3QF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ainsdale Sports Limited against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2020/00499, dated 17 March 2020, was refused by notice dated 11 May 2020.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the attachment of a camouflaged netting onto a 22-metre section of the rebound ball-stop fencing surrounding the synthetic sports pitches.
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Appeal B: APP/M4320/W/20/3255201

The Ainsdale Club, 772A Liverpool Road, Ainsdale PR8 3QF

- 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 Ainsdale Sports Limited against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2019/02416, dated 20 December 2019, was refused by notice dated 21 February 2020.
 - The development proposed is the attachment of camouflaged netting onto a 22-metre section of the existing surrounding rebound fencing.
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Decisions

1. Appeal A is allowed and attached to this decision is an LDC describing the existing operational development which is found to be lawful.
2. In these circumstances I take no action in respect of Appeal B.

Preliminary matter

3. The Council's decision notice describes the development in Appeal A as the continuation of a use. However, the attachment of the camouflaged netting, as described in the application form, is an operation within the scope of section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).

Appeal A – Reasons

4. The main issue in this appeal is whether the Council's refusal to issue an LDC was well-founded.
5. Under section 191(2) of the Act an operation is lawful if no enforcement action may be taken in respect of it and it does not contravene any requirement of an enforcement notice in force. The netting is not the subject of an enforcement notice, so it remains to be considered whether enforcement action may be taken in respect of it. However, this appeal will turn on the facts of the case and any relevant judicial authority, and not on the planning merits of the works.
6. The appellant claims that the netting is lawful, and therefore cannot be the subject of enforcement action, because it does not constitute development within the meaning of section 55 of the Act. This defines operational development as the carrying out of building, engineering, mining or other operations in, on, over or under land. It is common ground that the attachment of the netting is not an engineering or mining operation.

Whether the attachment of the netting is a building operation

7. The definition of a building in section 336 of the Act includes "any structure or erection" and in view of its size, permanence and degree of physical attachment, the rebound fence is a building for the purposes of this assessment. The definition of building operations in section 55(1A) of the Act includes "structural alterations of or additions to buildings". While the netting may not constitute a structural alteration of the fence, it is an addition to it.
8. Given that the netting is attached to the upper section of the fence and is some way off the ground, I do not find the precedents where attachment to the ground was a critical factor to be determinative. While it has not been indicated how much work was involved in attaching the netting to the fence, I saw it is lightweight and in sections that are attached to each other and to the fence by numerous steel clips and rings. However, these means of attachment appear to be determined by the weight and fabric of the netting and the fabric of the fence, rather than any intention for the netting to be temporary or moveable. Consequently, and given its stated purpose of preventing light spillage to adjacent houses on Gleneagles Drive, the netting is attached to the fence in a fixed position and intended to be permanent.
9. Accordingly, the attachment of the netting to the fence falls within the scope of building operations and is operational development.

Whether the attachment of the netting is permitted development

10. On the date the application was made, Class A of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order) permitted the erection, construction, maintenance, improvement or alteration of a fence, wall or other means of enclosure without the need for an express grant of planning permission, subject to specified limitations and exceptions. The operational development, which comprises the permanent addition of the netting, has altered the fence.
11. Article 3(2) of the Order says any permission granted by the Order is subject to any relevant exception, limitation or condition specified in Schedule 2.

Limitation A.1(a) did not apply because the fence is not adjacent to a highway used by vehicular traffic. Limitation A.1(b) did not apply because the attachment of the netting does not constitute the erection or construction of a means of enclosure. Exception A.1(d) did not apply because the fence is not within the curtilage of, or surrounding, a listed building.

12. Limitation A.1(c) was and is relevant to the netting and requires that it does not result in the fence exceeding its former height or 2 metres above ground level, whichever is the greater. However, I saw that the attachment of the netting has not increased the height of the fence, which already exceeded 2 metres in height, and thus A.1(c) does not prevent this development being permitted.
13. Accordingly, the attachment of the netting is a form of development that was permitted by Article 3 and Class A of Part 2 of Schedule 2 of the Order on the date the application was made and for this reason no enforcement action may be taken in respect of it.

Appeal A - Conclusion

14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the attachment of a camouflaged netting onto a 22-metre section of the rebound ball-stop fencing surrounding the synthetic sports pitches was not well-founded and that Appeal A should succeed. I will exercise the powers transferred to me under section 195(2) of the Act as amended.

Appeal B – Reasons

15. As I have found that the attachment of the netting did not require an express grant of planning permission and have decided to allow Appeal A and grant an LDC, I will take no action on Appeal B.

Mark Harbottle

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 17 March 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations constituted the alteration of a fence to which exclusions A.1(a), (b), (c) and (d) of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 did not apply. The operations were therefore permitted development pursuant to Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Mark Harbottle

Inspector

Date

Reference: APP/M4320/X/20/3255193

First Schedule

The attachment of a camouflaged netting onto a 22-metre section of the rebound ball-stop fencing surrounding the synthetic sports pitches.

Second Schedule

Land at the Ainsdale Club, 772A Liverpool Road, Ainsdale PR8 3QF

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated:

by Mark Harbottle BSc MRTPI

Land at: The Ainsdale Club, 772A Liverpool Road, Ainsdale PR8 3QF

Reference: APP/M4320/X/20/3255193

Not to Scale

