



Appeal Decision

Site visit made on 26 January 2021

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2021

Appeal Ref: APP/R4408/C/20/3259232

2 Inglewood, Darton, Barnsley S75 5NY

- 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 Mark Foster against an enforcement notice issued by Barnsley Metropolitan Borough Council.
- The enforcement notice was issued on 14 August 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a fence adjacent to the highway exceeding 1 metre in height.
- The requirements of the notice are: remove the existing fence panel, including gravel boards and pillars; that run adjacent to the highway (within 2 metres of Inglewood) as marked in Appendix 1.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld in the terms set out below in the formal decision.

Preliminary Matters

1. Planning permission was refused for the erection of a wooden fence at the appeal property on 21 February 2020¹. An appeal against that decision under section 78 of the 1990 Act was subsequently dismissed on 5 August 2020². At the time the appeal was determined, the fence was substantially complete. The enforcement notice was subsequently issued on 14 August 2020. The evidence before me indicates that the fence which was subject of the previous appeal decision is the same fence which is subject of the notice.

The Notice

2. It is noted that the enforcement notice requires only the removal of part of the fence, as annotated on Appendix 1 to the notice. Section 173(11) of the 1990 Act provides that where an enforcement notice in respect of any breach of planning control could have required buildings or works to be removed, or an activity to cease, but has stipulated some lesser requirement, which has been complied with, then, so far as the notice did not so require, planning permission shall be deemed to be granted under section 73A of the Act for that operation or use. On that basis, the LPA has determined to 'under-enforce' in

¹ LPA Ref: 2019/1479

² PINS Ref: APP/R4408/D/20/3251502

this instance, such that, if the notice is upheld and the requirements of the notice complied with, an unconditional planning permission will be granted under section 73A of the 1990 Act for the remainder of the fence.

The appeal on ground (a) and the deemed planning application

Main Issues

3. The main issues are:

- the effect of the development on the character and appearance of the area; and,
- the effect of the development on highway and pedestrian safety.

Reasons

Character and Appearance

4. The appeal site comprises a detached dwelling located on the corner of Inglewood and St Andrews Drive. The surrounding area is characterised by residential properties set back from the highway behind largely open front gardens with rear gardens enclosed by a range of walls, fences and vegetation.
5. The breach of planning control subject of the notice comprises the erection of a close boarded fence which runs for several metres along the eastern boundary of the property, abutting the footpath of St Andrews Drive. As a consequence of its position on the corner of Inglewood and St Andrews Drive, the fence appears particularly prominent within the street scene.
6. I note that there are a range of walls and fences of differing heights and designs within the area. However, for the most part these are set back from the highway, often screened by vegetation and located in less prominent positions than the appeal property.
7. In contrast, the height and close-boarded nature of the fence results in particularly stark and dominant feature. Moreover, the considerable length of the fence only serves to intensify its obtrusiveness. Indeed, it appears at odds to the softer, more varied landscape features of brick walls and mature vegetation which characterise the area. As a result, I find the fence appears as an incongruous feature within the street scene. The presence of other fences within the area as set out by the appellant does not justify the harm that will arise.
8. I conclude, therefore, that the development will have a harmful effect on the character and appearance of the area, in conflict with Policy D1 of the Barnsley Local Plan 2019 (the LP) which states that development is to be of a high quality design.

Highway Safety

9. The fence is set back several metres from the carriageway edge of St Andrews Drive with the footpath and highway edge between. As a consequence, the fence will not obstruct visibility of oncoming traffic from the left for drivers turning right out of Inglewood.
10. Nevertheless, the fence is located directly adjacent to the footpath on St Andrews Drive at the point where the footpath turns onto Inglewood. Due to

the design and height of the fence for the section where it projects beyond the front of the appeal property, pedestrians travelling on the footpath from the north towards the junction will be unable to see oncoming vehicles from Inglewood. Likewise, the fence will restrict the visibility of pedestrians for drivers approaching the junction, particularly given the curve of the road. Whilst the construction of the fence has created small gaps between panels, this does not provide the clarity of visibility necessary to allow pedestrians and drivers to have sufficient view of one another. Moreover, as the appellant points out, the visibility situation is exacerbated by cars parking on the carriageway to the front of the appeal property.

11. As such, the development will result in the potential for pedestrians to attempt to cross the carriageway at the junction of Inglewood and St Andrews Drive without being aware of oncoming vehicles from Inglewood, resulting in the potential for collisions.
12. The appellant suggests that in the event the notice is upheld, a hedge of greater height will be planted in place of the part of the fence which the notice requires to be removed. However, a hedge of an increased height above that of the fence would not materially alter the obstruction to visibility, since its existing height is such that it restricts visibility for almost all pedestrians. Likewise, the density of a hedge cannot materially increase the obstruction to visibility caused by a closed boarded fence. As such, a fallback position which would be of equal harm would not justify the retention of the fence in its entirety here.
13. I conclude, therefore, that the development will result in a harmful effect on highway and pedestrian safety. As a result, the development conflicts with Policy T4 of the LP which states that development will provide all transport users with safe, secure and convenient access and movement.

Other Matters

14. I note the appellant's concerns regarding their safety given their recent experience of attempted break-ins. I also note the appellant's intention to paint the fence a darker colour. However, such matters would not outweigh the cumulative harm to character and appearance and highway and pedestrian safety I have identified.

Conclusion

15. 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.

Decision

16. 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.

J Whitfield

INSPECTOR