The Planning Inspectorate

Appeal Decisions

Site visit made on 1 March 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30th March 2021

Appeal A: APP/U4230/C/20/3260866
110 Nevile Road, Salford, M7 3PL

- 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 Yonathan Kahn against an enforcement notice issued by Salford City Council.
- The enforcement notice, numbered 19/00089/WPP3, was issued on 7 October 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a boundary fence, associated posts and gates to the front of the property.
- The requirements of the notice are 1) Permanently reduce the fence, associated posts and gates to a maximum height not exceeding one metre; 2) remove from the site all materials arising from compliance with no 1).
- The period for compliance with the requirements is 56 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Appeal B: APP/U4230/X/20/3264531
110 Nevile Road, Salford, M7 3PL

- 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 Mr Yonathan Kahn against the decision of Salford City Council.
- The application Ref 20/76137/CLUD, dated 9 October 2020, was refused by notice dated 4 December 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 for a fence above 1m high.

Decision

1. Appeal A is allowed on ground (g), and it is directed that the enforcement notice be varied: by the deletion of 56 days and the substitution of 3 months as the period for compliance. Subject to these variations the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

2. Appeal B is dismissed.

Application for costs

3. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary Matter in Appeal B

4. The application was made under section 191 of the 1990 Act for a lawful development certificate for an existing operation in relation to the fence at the front of the property. The decision issued by the Council incorrectly refers to section 192 of the 1990 Act (instead of section 191) but the particulars of the development correctly refer to "existing fence above 1m high" and the appeal has been determined on that basis i.e. in relation to the application made under section 191.

Appeal A

Ground (e)

5. An appeal on this ground is on the basis that the notice was not properly served on everyone with an interest in the land. The appellant has said that the notice was not served on his partner who is registered with the Council at this address, but he has not shown that either he or his partner was substantially prejudiced by this failure. The appeal on this ground is therefore dismissed.

Appeals A and B

Ground (d) and the LDC

6. The evidence and arguments submitted in both appeals are the same.

7. To succeed in Appeal A on ground (d), the appellant must show that the fence was substantially completed prior to 4 years before the service of the notice, i.e. prior to 7 October 2016. The burden of proof is on the appellant. If a local planning authority has no evidence itself, nor from others, to contradict or otherwise make the appellant's version of events less than probable, provided the appellant's evidence alone is sufficiently precise and unambiguous, the appeal should be allowed. The test to be applied in weighing the evidence in on the balance of probabilities.

8. The main issue in Appeal B is whether, on a balance of probabilities, the Council's refusal to grant the lawful development certificate was well-founded. That turns on whether the fence was substantially completed more than 4 years prior to 9 October 2020 (the date of the LDC application).

9. The appellant's case in both appeals in that the fence was built more than 4 years prior to the service of the notice and the LDC application and the appellant's evidence to support this was provided during the course of Appeal B.

10. A photograph provided by the appellant dated 26 September 2016 shows 2 panels of the fence only and does not show the gate to be in place. The receipt provided appears to be dated 20 September 2016 (although the year shown is unclear) but it does not include an address or confirm that the work has been undertaken by that date.

11. The Council have provided a photograph dated October 2017 which shows the boundary with 2 Norwood Avenue and the fence panel is not in place on this date, although the black metal post can be seen and the appellant says that the gate was having maintenance at that time and the wood was being re-treated. However, the gate is not located on the part of the development that is shown in the photograph.

12. Neither of the photographs submitted show the fence and gate in place in its entirety and the appellant's evidence is therefore not sufficiently precise and unambiguous to show that the development was substantially completed prior to 6 October 2016. The ground (d) cannot therefore succeed and the Council's refusal to grant a certificate of lawful development was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal A

Ground (a) and the deemed application for planning permission

13. The main issue in this ground is the effect of the development on the character and appearance of the area.

14. The host property is a semi-detached house on a prominent corner of two streets in a predominantly residential area. The other houses in the vicinity generally have front gardens with low walls and/or hedges adjoining the pavement which give the area a generally open aspect. The development as alleged in the notice is the fence, associated gates and posts and the parties agree that it is over 1 metre in height along its length and constructed from treated wooden panels and black metal posts, which accords with the photographs submitted during the course of this appeal and my observations during the site visit.

15. The development, by reason of its height, materials, colour and treatment, is overly prominent and incongruous in the street scene. It does not match or complement the other surrounding buildings or materials and is much higher and more visually obtrusive than the other boundary treatments evident in immediate vicinity. The appellant has suggested that the appearance of the development could be altered by changing its colour or the addition of fake ivy but this would not sufficiently mitigate the harm as set out above. The development causes material harm to the character and appearance of the area and is in conflict with saved Policy DES1 of the City of Salford Unitary Development Plan 2004 – 2016 ("the Development Plan") in that it fails to respond to its physical context or respect the positive character of the local area.

16. The appellant's case is that it is in the best interests of his child that the fence and gate remain at the current height and I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had regards to the best interests of the child and the rights conveyed within the Human Rights Act.

17. In respect of the above, the refusal of the deemed application for planning permission and dismissal of the ground (a) appeal is a proportionate and necessary approach to the legitimate aim of ensuring that harm to the character and appearance of the area is avoided. Furthermore, a secure and safe garden could be achieved by an alternative form of development in terms of design and materials. Therefore, whilst I acknowledge the personal circumstances of the appellant, as well as those of his partner and child (insofar as I have been provided with that information), I conclude that these are not matters which outweigh the harm that caused by the development in respect of my previous conclusions on the other main issue.

18. The development causes harm to the character and appearance of the area and is in conflict with the Development Plan as set out above, as well as the National Planning Policy Framework. As the material considerations do not outweigh this conflict, I conclude that the appeal on this ground should be dismissed and planning permission is refused.

Ground (f)

19. To succeed on this ground the appellant must show that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused by such a breach. In this case, the notice seeks to remedy the injury to amenity as it requires the reduction of the fence, associated posts and gates to a maximum height not exceeding one metre rather than the total removal of the unauthorised development. The requirements do not exceed what is necessary to remedy the injury to amenity as set out above in relation to the appeal under ground (a) and the appeal on this ground does not succeed.

Ground (g)

20. The appellant is seeking between 6 to 12 months as the period for compliance with the notice and states that in light of the ongoing situation with Covid and the expense involved the period of 56 days specified in the notice falls short of what should reasonably be allowed. In this instance, the appellant does not provide details regarding the specific issues caused relating to the ongoing Pandemic and, in light of the fact that the necessary works are all outdoors and taking account of all of the circumstances, a period of 3 months is a proportionate time for compliance. I therefore direct that the notice be varied accordingly.

Zoë Franks

INSPECTOR