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## Appeal Decision

Site visit made on 31 March 2021

**by A A Phillips BA(Hons) DipTP MTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 04 May 2021**

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**Appeal Ref: APP/F2360/C/20/3264923**

**17 Highgate, Penwortham, Preston, Lancashire PR1 0HY**

- 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 Maureen Lane against an enforcement notice issued by South Ribble Borough Council.
- The enforcement notice was issued on 11 November 2020.
- The breach of planning control as alleged in the notice is the erection of a 2.4 metre wooden fence erected on a built up bank of soil some 30 cm higher than the natural ground level to the rear of number 17 Highgate, Penwortham (shaded blue for positional identification purposes), on the land outlined in red on the site plan attached.
- The requirements of the notice are to permanently remove the wooden fence shaded blue on Plan 1 from the Land or in the alternative reduce the height of the fence to two metres or less from the natural ground level which excludes the built up ground levels immediately adjacent to the fence.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed and the enforcement notice is quashed.**

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### Application for costs

1. An application for costs was made by South Ribble Borough Council against Mrs Maureen Lane. This application is the subject of a separate decision.

### The appeal on ground (b)

2. The ground of appeal is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. In order to succeed on this ground it would need to be demonstrated that the erection of a 2.4 metre high wooden fence erected on a built up bank of soil some 30 cm higher than the natural ground level had not occurred on the land.
3. In this case the alleged breach of planning control is described in the enforcement notice in precise terms, comprising the erection of a fence on a built up bank of soil higher than natural ground level. I have studied the written and photographic evidence submitted by the Council and made my own careful observations and measurements on site. I observed at my visit that the rear garden of the appeal property is being landscaped, including installing various structures and features and therefore, it may be the case that since the enforcement notice was served in November 2020 the conditions I found, including land levels, may have changed. However, for the purposes of clarification, ground (b) is worded in the past tense, and the question is

- whether the breach had occurred by the date of issue of the enforcement notice.
4. The fence in question measures 2.4 metres high and there is no suggestion that its height has changed since it was first erected. However, there is insufficient evidence before me that the fence was erected on a bank of soil some 30 cm higher than the natural ground level to the rear of the property. I have considered the Council's datum point taken from the adjacent fence in the garden at the eastern boundary with the adjacent property, no. 19 Highgate, the Council's description of their investigations and the various photographs and annotated drawings submitted but am unable to reconcile my findings with the alleged breach of planning control.
  5. Photographic evidence of a bank of soil is unclear and I have taken account of the land levels to the rear of the property, including those to the immediate rear of the house, the driveway, immediately adjacent to the fence and the neighbouring rear garden at no. 19 Highgate. My own measurements show that at no point along the fence is it 2.7 metres higher than the adjacent natural ground level, nor is there evidence that a 30 cm bank of soil higher than natural ground level adjacent to the fence was present when the enforcement notice was served.
  6. Furthermore, even when considering that the land to the rear of the appeal property was undulating when the fence was erected, given the evidence before me, in my planning judgement, I cannot see how it is possible that the fence was erected on such a bank. Indeed, it appears to me that for the alleged development to have occurred, the ground levels of the rear garden and surrounding area would have been significantly lower than after the fence was erected. Given the levels I measured and observed on site, such a scenario is highly unlikely and there is insufficient evidence for me to conclude otherwise.
  7. Therefore, I conclude from the evidence before me and on the balance of probability that the alleged breach of planning control comprising the erection of a 2.4 metre high wooden fence erected on a built up bank of soil some 30 cm higher than the natural ground level had not occurred. The appeal on ground (b) succeeds.

## **Conclusions**

8. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly, the enforcement notice should be quashed. In these circumstances the appeal under ground (c) set out in section 174(2) to the 1990 Act does not need to be considered.

## **Formal Decision**

9. The appeal is allowed and the enforcement notice is quashed.

*A A Phillips*

INSPECTOR