



Appeal Decisions

Site visit made on 5 May 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 17 May 2021

Appeal A Ref: APP/C4235/C/20/3263798

Appeal B Ref: APP/C4235/C/20/3263799

147 Stansbury Place, Offerton, Stockport SK2 5LQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mrs Anna Guillemain against an enforcement notice issued by Stockport Metropolitan Borough Council. Appeal B is made by Dr Henri Guillemain.
- The enforcement notice was issued on 9 November 2020.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a fence over 1 metre in height adjacent to the highway used by vehicular traffic.
- The requirements of the notice are to remove the fence surrounding the front garden of the property to Crosswaite Road from the land, this includes all fence panels, either wooden or concrete, all fence posts either wooden or concrete and the pedestrian gate.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed.

Preliminary Matters

1. The ENAR4(c)¹ requires an enforcement notice to set out the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. The notice clearly identifies the fence as that "to the front of 147 Stansbury Place, Offerton, Stockport SK2 5LQ" in section 4. Section 2 of the notice sets out that the land affected is shown edged in red on the attached plan. That plan outlines the relevant property. The property is bounded by a highway to the front and rear. The fence encloses the area of garden which adjoins Crosswaite Road. This is made clear in the first requirement and was also stated in the Council's letter which accompanied the notice. I am satisfied that it is clear which property the notice concerns. In addition, it specifies the alleged breach and the recipients of the notice would not be misled.
2. The appellants acknowledge that a fence has been erected on Crosswaite Road but explain that this is considered to be the rear of the property, not the front as the notice indicates. As set out above, it is clear from the notice the land to which it relates and the correct address is stated. Whether or not the fence surrounds the front or rear garden is not material and, as such, I do not consider the notice to be a nullity or otherwise invalid.

¹ Town and Country Planning (Enforcement Notices and Appeal) (England) Regulations 2002.

3. For the avoidance of doubt, the planning merits of the proposal, such as the need for the structure for security purposes, its impact on the area and other similar types of development in the vicinity, are not matters for me to consider in the context of an appeal on 'legal' grounds under section 174 of the 1990 Act as amended. My decision rests on the facts of the case, and on relevant planning law and judicial authority. In this type of appeal the burden of proof lies with the appellant, with the relevant test being on the balance of probabilities.

The Ground (b) Appeal

4. In order to succeed in an appeal on ground (b), the appellant must show that the alleged breach of planning control has not occurred as a matter of fact. The appellants readily accept that a fence has been erected, as alleged, and so the appeal on ground (b) must fail.

The Ground (c) Appeal

5. To succeed in an appeal on ground (c), the appellant must show that the matters alleged do not constitute a breach of planning control.
6. The appellants argue that the fence constitutes development 'permitted' under Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This concerns the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Development is not permitted under A.1(a)(ii) if the height of any gate, fence, wall or other means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would exceed 1 metre above ground level.
7. The appellants state that the fence is situated over 4.5m from a highway used by vehicular traffic, due to the presence of a verge and pavement. However, section 336(1) of the 1990 Act provides that, for the purposes of that Act, 'highway' has the same meaning as in [s328] of the Highways Act 1980. It states that, except where the context requires, 'highway' means the whole or any part of a highway other than a ferry or waterway. Hence, the highway is taken to be the carriageway, the footway and any verge.
8. On this basis, the fence has been erected adjacent to the highway. It does not fall within the limitations of Schedule 2, Part 2, Class A of the GPDO and, therefore, express planning permission would be required. In the absence of any such permission, the development constitutes a breach of planning control and the appeal on ground (c) cannot succeed.

Conclusion

9. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Formal Decisions

10. The appeals are dismissed and the enforcement notice is upheld.

Debbie Moore

Inspector