
Appeal Decision

Site visit made on 25 May 2021

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

an Inspector appointed by the Secretary of State

Decision date: 17 June 2021

Appeal Ref: APP/X4725/C/21/3270092

43 Northfield Lane, Horbury, Wakefield WF4 5HU

- 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 Richard Teal against an enforcement notice issued by City of Wakefield Metropolitan District Council.
- The enforcement notice was issued on 29 January 2021.
- The breach of planning control as alleged in the notice is a boundary fence which is over 1 metre in height adjacent to the highway.
- The requirement of the notice is to remove the unauthorised fence from the land.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

The appeal on grounds (b) and (c)

1. The grounds of appeal are that the breach of control alleged in the enforcement notice has not occurred and that the matter alleged in the enforcement notice does not constitute a breach of planning control. In order to succeed on ground (b) it would need to be demonstrated that a boundary fence which is over 1 metre in height has not been built adjacent to the highway. In this particular case it is clear to me that a fence over 1 metre in height has been built, but the key questions are whether it is a boundary fence and whether it has been constructed adjacent to the highway.
2. Under the terms of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) the erection of a gate, fence, wall, or other means of enclosure can be permitted development under Article 3, Schedule 2, Part 2, Class A. However, the erection of a gate, fence, wall, or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic which is more than 1 metre above ground level is not permitted. As such, planning permission would be required.
3. The appellant disputes that the fence is situated on the boundary and furthermore that it is not adjacent to the highway. The word 'adjacent' is not defined in the Planning Act and the courts have held that legislators were not likely to have intended 'a one size fits all approach'. The common dictionary definition of 'adjacent' is 'lying near to' or 'contiguous', although Case Law also clarifies that that 'adjacency' does not equate to something being 'contiguous' or 'abutting'.

4. Thus the position established by the courts is that the word 'adjacent' does not necessarily mean that the fence has to be abutting or touching the highway. In the case of *Simmonds v SSE and Rochdale MDC* [1981] it was held that a fence higher than one metre and less than one metre from a footway to a highway did abut the highway. In another case a two metre distance (between highway and enclosure) also resulted in a conclusion that the structures were 'adjacent' to the highway.
5. Therefore, the overall thrust of case law and other appeal decisions is that a wall or fence can be set back from a highway, but still be 'adjacent' to it, as a matter of fact and degree, provided that the enclosure is clearly to define the boundary of the property concerned from the highway and is perceived to do so. As indicated above each situation has to be considered on its merits and a planning judgement needs to be made in each case.
6. In the case before me there is an existing stone boundary wall and the fence the subject of the enforcement notice also forms a boundary, albeit one higher than the wall. In my judgement, it is intended that the wall and fence together form a means of enclosure to the appellant's land. Consequently, although not physically attached together, the combined wall and fence structures form a means of enclosure.
7. In addition, there is no verge or other landscape feature which currently obstruct the wall and fence from the highway and the combined boundaries are perceived to form the means of enclosure and the boundary between the highway and private land. The evidence before me and my own site observations lead me to conclude that the fence over 1 metre high has been built and has been constructed as a means of enclosure adjacent to the highway.
8. Therefore, the boundary fence which is over 1 metre in height adjacent to the highway has been erected and, furthermore, it does not benefit from permitted development rights through the provisions of the GPDO and constitutes a breach of planning control. Therefore, the appeal on grounds (b) and (c) must fail.

The appeal on ground (f)

9. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purpose of an enforcement notice are set in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s174(4)(b)). Since the notice requires the fence to be removed, the purpose is clearly to remedy the breach. Leaving any part of it in place would not achieve that purpose. In this respect, the appeal on ground (f) fails.
10. It is argued that part of the fence could be moved so it is no longer considered to be part of the boundary treatment, but the GPDO does not grant retrospective planning permission. In this case the fence would only be permitted by the GPDO if it met the provisions of the GPDO when constructed. That is not the case, here. Therefore, the requirements of the enforcement notice must stand.

Formal Decision

11. The appeal is dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR