



Appeal Decisions

Site visit made on 25 May 2021

by **S A Hanson BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 June 2021

Appeal A Ref: APP/F1610/C/21/3269018

Appeal B Ref: APP/F1610/C/21/3269019

1 Martin Close, Cirencester, Gloucestershire GL7 1XY

- 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 appeals are made by Miss Danielle Messenger (Appeal A) and Mr Richard Lewis (Appeal B) against an enforcement notice issued by Cotswold District Council.
 - The enforcement notice was issued on 12 January 2021.
 - The breach of planning control as alleged in the notice is: *Without planning permission the erection of a boundary fence on the Land ("the unauthorised works")*.
 - The requirements of the notice are: *Permanently remove the unauthorised fence including its artificial covering and the gate attached to it from the Land*.
 - The period for compliance with the requirements is 1 (one) month.
 - Appeal A is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended (1990 Act).
 - Appeal B is proceeding on the grounds set out in section 174(a) and (f). Since a fee has been paid, an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected by deleting:

Without planning permission the erection of a boundary fence on the Land ("the unauthorised works").

And substituting therefor:

Without planning permission, the erection of a boundary fence parallel to and on the inside of the existing boundary fence on the Land.

2. Subject to this correction the appeal is dismissed and 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.

Procedural Matters

3. Appeal B is subject to an appeal on ground (a) in addition to ground (f). However, the appellant's argument here appears to include a hidden ground (c) appeal because the recently erected fence is 2m¹ in height and so he argues it is development that would fall within the permitted development provisions for Schedule 2, Part 2, Class A of The Town and Country Planning (General

¹ Measured from the ground level within the garden that is reported by the Council as being at a higher level than the adjacent highway land.

Permitted Development) Order 2015 (the GPDO). I therefore address this matter under legal ground (c).

The Enforcement Notice

4. Section 173(1) of the 1990 Act requires an enforcement notice to state the matters which appear to the Council to constitute the breach of planning control. Established caselaw² says that a notice must tell a recipient of it fairly what he has done wrong and what must be done to remedy the breach.
5. The notice alleges the erection of a boundary fence on the Land and it requires the fence including its artificial covering and the gate attached to it to be removed. As there are two boundary fences on the Land, the allegation should be corrected to provide clarity. I do not consider that by making this correction under section 176(1)(a) of the 1990 Act that there would be any injustice to either party. This is because, following on from the correction of the allegation, the requirements would become less onerous referring to the removal of one boundary fence rather than the entire boundary treatment.

Appeal B - Hidden ground (c)

6. Development is not permitted by Class A1(a) of Part 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) if the height of any gate, fence, wall or means of enclosure adjacent to a highway used by vehicular traffic would exceed 1m above ground level. The inner fence is directly behind and separated from the highway by the original 1.8m fence.
7. The question is whether the height of the fence in this position exceeds the GPDO limitations. Put simply, would the inner fence be adjacent to the highway? The term 'adjacent' is not defined in statute or case law for the purposes of applying Class A, its interpretation is a matter of fact and degree and requires a judgment to be made in each individual case. The fence is directly behind the existing fence for its entire length and this adjoins the pavement which forms highway land. There is no intervening land in between. I consider, as a matter of fact and degree, that the inner fence is adjacent to a highway used by vehicular traffic.
8. Therefore, the inner fence does not benefit from deemed planning permission pursuant to Class A of Part 2 of Schedule 2 to the GPDO. Express planning permission is required.

Appeal B - Ground (a) and the deemed planning application

Main Issue

9. This is the effect of the development on the character and appearance of the street scene.

Reasons

10. The appeal property is an end of terrace dwelling located within a predominantly residential area. A public footway leads from the front of the property which faces Martin Close to the rear where there is access to the garden from Mount Street.

² *Miller-Mead v Ministry of Housing and Local Government* [1963] 1 All ER 4592

11. The rear garden of the property is surrounded by a 1.8m close boarded fence, which, according to the information supplied by the Council, has been in place for several years and is similar to boundary treatments for neighbouring properties within the terrace. Due to its staggered position in the street, the property is visually prominent with both the side and rear boundaries exposed within the public realm.
12. The enforcement notice attacks the fence, which I shall refer to as "the structure", that has been erected within the garden, running parallel to the inside of the original boundary fence. This structure is some 0.75m higher than the original fence and displays an artificial green covering which is described as "artificial conifer hedging".
13. Policy EN2 of the Cotswold District Local Plan 2011–2031 (2018) requires development to be designed in a manner that respects the character and distinctive appearance of the Cotswold District in accordance with the Cotswold Design Code Appendix D. Guidance within the Cotswold Design Code requires new development to respond to its townscape setting and advises that modern, incongruous forms of boundary treatment should be avoided, especially in prominent locations. The use of traditional materials for boundary treatments is encouraged whilst it is suggested that the use of close-boarded and other forms of modern timber fencing be avoided.
14. Due to its prominent location and height, the structure is clearly visible above the original fence. By way of its height and its design, the structure fails to respect the character of the neighbourhood. It is not in keeping with the boundary treatments used to surround neighbouring properties and as such its appearance is unsympathetic with the street scene and its surroundings. Unfortunately, the addition of the artificial green covering further exacerbates the inappropriate nature of the development which has resulted in an uncharacteristic high enclosure to the road and an incongruous addition within the street scene. Overall, the development fails to contribute positively to the character and distinctive appearance of the locality and is contrary to the aims of Policy EN2 of the LP and the Cotswold Design Code. In this respect I also find that the development conflicts with the National Planning Policy Framework which, amongst other matters, aims to achieve well-designed places that are sympathetic to local character.

Conclusion

15. Overall, there are no material considerations to indicate a determination other than in accordance with the development plan. For the reasons given above, I conclude that the appeal on ground (a) should not succeed and I shall refuse to grant planning permission on the deemed application.

Appeals A and B – Ground (f)

16. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in s173 of the 1990 Act and are to remedy the breach of planning control³ or to remedy injury to amenity⁴. Reading the notice as a whole, it is clear that the purpose is to remedy the breach of planning

³ s173(4)(a) of the 1990 Act

⁴ s173(4)(b) of the 1990 Act

control by restoring the land to its condition before the breach took place. These requirements are in accordance with a173(4)(a) of the 1990 Act.

17. The appellants express concern that the entire boundary treatment should be removed to comply with the notice. However, the Council makes it clear in its submissions that the purpose of the notice is to remove the recently erected inner fence. As the gate appears to form part of this construction, its removal would be necessary too as without the inner fence, the gate would have no support. The removal of the inner fence would leave the original 1.8m fence in situ which, with the re-introduction of the garden gate, would provide security and privacy for the appellants.
18. In these circumstances, the requirements of the notice are not excessive. Furthermore, no further details are offered to explain how lesser steps might remedy the breach.
19. The appeal on ground (f) fails.

S A Hanson

INSPECTOR