



Appeal Decisions

Site Visit made on 27 July 2021

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 27 August 2021

Appeal A Ref: APP/T0355/C/21/3273821

Glebe Cottage and Land at Glebe Cottage, Waltham Road, White Waltham, SL6 3JD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Lee Hall against an enforcement notice issued by Royal Borough of Windsor and Maidenhead.
 - The notice, reference 18/50104/ENF, was issued on 23 March 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a boundary treatment (consisting of a timber close-slatted design fence, brick wall and associated pillars/gates) adjacent to a highway (as identified on the attached site plan in green).
 - The requirements of the notice are: (i) Remove the boundary treatment (consisting of a timber close-slatted design fence, brick wall and associated pillars/gates) from the land; AND ii. Remove materials from the land following completion of step (i)
 - The period for compliance with the requirements is: 1 month
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
 - An identical appeal, reference 3273822, has been made by Mrs Deborah Hall
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Decisions

Appeal A and B 3273821 & 3273822

1. It is directed that the enforcement notice is corrected by: deleting the allegation and replacing it with "*the breach of planning control as alleged in the notice is without planning permission, the erection of a boundary treatment consisting of a timber close-slatted design fence adjacent to a highway*"; and varied by deleting requirement (i) and replacing it with "*(i) reduce the timber fence to a height of no more than 1m*".
2. Subject to these corrections and variations, the appeals are dismissed and the enforcement notice is upheld.

The Appeal on Ground (c)

3. This ground is that the matters alleged do not require planning permission as in this case it is argued the gates, pillars and walls are permitted development.
4. The development acts as an entrance to Glebe Cottage. A fence has been erected next to the road and the appellant accepts this is not permitted development. However, an area has been created in front of the new gates for

vehicles to pull off the road in safety while the gates are opened. Brick pillars support wooden gates and flanking walls link the gate pillars to the new fence, joined at another pillar and to the neighbour's brick wall and gates, which are in a similar design and position.

5. The brick pillars, walls and gates are turned at an angle facing down the road and setback behind the parking area. A small hedge and shrub garden has been planted in front of the wall between the gate and the fence. Small trees and shrubs also stand in front of the wall the links the gate to the neighbour's wall. The Council suggest this planting is on highway land and so should be removed, but in any event it is clearly new and I shall ignore it for purposes of considering the technical question of whether the gates, pillars and walls are adjacent to the highway or not, as that is the sole issue in this appeal.
6. There is no specific definition of what 'adjacent to the highway' means as it has to be a matter of fact and degree in each case. The appellant quotes from another appeal decision where the fence was 1.7m from the highway was not adjacent as it was separated by a thick bed of planting and could not be touched without entering the appellant's land. I am not sure either of these are generally applicable criteria, but the Inspector also found there was no sense of immediacy or proximity, which is true in this appeal also. The setback creates a substantial space between the gates and the road, and the sense of distance is exaggerated by the angle at which the gates are set. Given the relatively modest nature of the development I find their relationship to the highway appears to be distant and oblique rather than adjacent. In my view therefore they are not adjacent to the highway, and so as they are 2m in height they would fall within the limits in Part 2, Class A of Schedule 2 of the General Permitted Development (England) Order 2015.
7. It is arguable the pillar nearest the road that links to the fence is in fact adjacent to the road, but I consider the pillars, walls and gates all form one act of development, they are clearly linked together, and so as a whole the walls, pillars and gates are permitted development.

The Appeal on Ground (f)

8. The fence is clearly adjacent to the highway and so cannot be more than 1m in height. The appellant argues it is excessive to require him to remove it completely as it can just be replaced the next day with a 1m fence. A less excessive requirement would be to reduce it to 1m. I agree this is more sensible. Even if I had upheld the notice, the fence is different from the brick element and so I can see no legal impediment to treating it separately, as Lord Carnwarth said enforcement is meant to be remedial not punitive. In any event I am allowing the appeal on ground (c) so the brick pillars, walls and gates will remain. A 2m fence has already been refused planning permission so it makes sense to reduce it to 1m, which would bring it in line with what would have been lawful to start with. I shall vary the requirement accordingly.

Conclusion

9. I shall uphold the appeal on ground (c) and delete the allegation referring to the brick pillars, walls and gates, but will dismiss the appeal overall so as to leave the notice to bite on the fence and vary the requirements as discussed above.

Simon Hand

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/T0355/C/21/3273821	Mr Lee Hall
Appeal B	APP/T0355/C/21/3273822	Mrs Deborah Hall