
Appeal Decision

Site visit made on 21 June 2021

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 September 2021

Appeal Ref: APP/H3700/C/21/3267051

Land adjacent 6 Phillippes Road, Warwick, Warwickshire, CV34 5TR

- 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 Act").
 - The appeal is made by Mr Laki Singh against an enforcement notice issued by the Warwick District Council.
 - The enforcement notice was issued on 19 November 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a 1.95m high close boarded timber fence (as more particularly shown in photograph 1 in Annexe A attached to this notice)
 - The requirements of the notice are:
 - [i] Permanently remove from the land the timber fence in its entirety (as more particularly shown in the photograph marked Annexe A to this notice); and
 - [ii] Permanently remove from the land all resulting waste and materials.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (e), (d) and (g) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Procedural matters

2. In addition to the location address referred to in the banner heading above the enforcement notice also refers to an alternative 'Canalside Farm' location. However, the land affected is clearly shown by the red line on the plan attached to the notice and is adjacent to 6 Phillippes Road. No confusion as to which land the notice refers to has arisen resulting from the alternative address.
3. The requirement at section 5[ii] is ambiguous by the inclusion of the word "and" which suggests that other unspecified materials need to be removed. Since the removal of the fence and resulting waste materials would fully remedy the breach of planning control neither party would be prejudiced by deleting the word "and". I will therefore correct the notice accordingly.

Appeal site

4. The appeal site is a rectangular strip of land which previously formed an open grass verge between 6 Phillippes Road and the highway footpath. Previously overgrown conifer trees have been removed and the land has now been

enclosed by the fencing subject of the notice such that it appears to form part of the garden area of No. 6.

Appeal on ground (e)

5. Ground (e) concerns whether a copy of the enforcement notice was properly served as required by section 172 of the Act.
6. The key issue is whether the notice was properly served on the owners and occupiers of the land to which it relates, and on any other persons having an interest in the land, being an interest which, in the opinion of the Council, is materially affected by the notice. It is for the Council to decide who is materially affected, but it runs the risk of an enforcement notice being quashed if it exercises its discretion wrongly.
7. The notice was served on the owner and occupier of 6 Phillippes Road and the appellant Mr Singh. At the time the notice was issued the previous owner of the land (the estate development company) had gone into liquidation some years previously. In such circumstances such land is very rarely retained or "vested" as Crown land due to it being disclaimed by the Treasury solicitors. The appellants submitted Design and Access Statement¹ (DAS) confirms that to be the case here.
8. Consequently, on the balance of the evidence, I can find no defect in the Council's service of copies of the enforcement notice. As such, the appeal on ground (e) fails.

Appeal on ground (d)

9. In order for the appeal to succeed on this ground the onus is on the appellant to demonstrate that at the time the notice was issued it was too late for enforcement action to be taken. The appellant must show therefore that the fencing subject of the notice was erected more than 4 years before the notice was issued; hence before 19 November 2016. The test of the evidence is on the balance of probability.
10. It is argued that "the 2 x runs of fences perpendicular to the footpath are older than 4 years old". However, there is no convincing direct evidence to support the appellant's case. To the contrary, the appellant's own evidence² relating to the history of the site states that he procured the services of a fencing contractor in July 2018. This corresponds with the Council's evidence that they only started to receive complaints of the fence enclosure of the land in 2018.
11. Having regard to all of the evidence before me I find that the appellant's evidence to be imprecise and ambiguous. Overall, he has failed to demonstrate, on the balance of probability, that any part of the fencing is immune from enforcement action.
12. The appeal on ground (d) therefore fails.

Appeal on ground (a)/deemed application for planning permission

13. The appellant has suggested a revised scheme whereby the long run of fence would be 2 metres away from the footpath. However, the appellant's suggested

¹ See "Exhibit DS1"

² Document attached to email dated 27 January 2021

revisions would amount to a different scheme which would need to be subject of a new application to the Council in the first instance. I can only determine the appeal on the basis of the scheme as it currently exists.

Main Issue

14. Having regard to the stated reason within the notice the main issue is the effect of the fencing on the character and appearance of the area.

Reasons

15. I am required by law³ to determine the appeal in accordance with the Council's Development Plan policies unless material considerations indicate otherwise.
16. The Warwick District Local Plan (2017) (LP) forms part of the Council's Development Plan. Amongst other matters LP Policy BE1 requires that new development should positively contribute to the character and quality of its environment through good layout and design; harmonises with or enhances the existing settlement in terms of physical form and land use; and reinforces or enhances the established urban character of streets, squares and other spaces.
17. Contributing and enhancing the wider estate's character is the presence of wide green verges between residential plots and the highway boundary. The land subject of the appeal is one such parcel of land.
18. The tall close-boarded timber fence, subject of the appeal, encloses the verge feature on three sides except for a small area on the corner of Phillippes Road and a thin strip along its length on Brese Avenue. Given its corner position and high visibility from both short and longer distances it is highly prominent and noticeable in the street scene. As such, and notwithstanding some support for the scheme from local neighbours, I find that the close board fencing to be an inappropriate feature that is incongruous to the open green space that was formerly visible, and to the pattern and character of such spaces in the wider estate. It thereby results in significant harm to the character and appearance of the area. Planting along the outside edge of the fencing does not adequately mitigate this harm.
19. The appellant refers, with photographs, to previously poor maintenance of the verge, anti-social behaviour, dog-fouling and dog-grooming, and littering. No precise details of such events have been provided and so the extent of such problems cannot be quantified. However, while the existing enclosure of the land will have undoubtedly prevented such anti-social and other undesirable effects, it may disperse them to other verges in the area. Although I saw no evidence of that during my single visit to the appeal site and the surrounding area, it may occur over a longer time frame. Turning to the appellant's highway safety concerns, there is no convincing evidence before me to demonstrate that the pre-existing relationship of the land with all highway users was less than adequate compared to the existing position with the fencing enclosure and its resulting reduction in visibility. Consequently, in support of allowing the appeal I attach only limited weight to these considerations.
20. The appellant also refers, with submitted photographs, to other properties and boundary treatments in the local area and their relationship with regard to the estate layout. However, I do not know the full circumstances of when those

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004

developments were carried out, or whether they benefitted from planning permission or were unauthorised. Additionally, I am not convinced that those that I saw, and those in photographs, are cases with exactly the same circumstances as the appeal before me. Moreover, other properties with less than adequate relationships with the highway and the character and appearance of the area are not justification for allowing the development in this appeal, which I have found to be unacceptable. Consequently, none of these other cases set a precedent given that I am required by law to determine the appeal in accordance with the latest up-to-date Development Plan policies and material considerations.

21. For all these reasons I find that the fence results in significant harm to the character and appearance of the area in conflict with LP Policy BE1. The harm is not outweighed by other considerations.
22. The appeal on ground (a) therefore fails.

Appeal on ground (g)

1. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed. The notice requires compliance within 4 months.
2. The appellant has not suggested a specific alternative period of time for compliance. That aside, his concerns over compliance relate to his personal circumstances in the context of the Coronavirus pandemic as it existed at the time of lodging his appeal and which I have taken into account. I am also mindful that the harm resulting from the breach of planning control should be remedied as soon as possible.
3. In the light of the current circumstances of the pandemic and the general return to work of most of the workforce, including building/fencing contractors, I see no reason why arrangements could not now be made and the fence removed within the 4 month compliance period. However, if circumstances change the Council have their own powers to vary the period of compliance if they consider it necessary to do so.
4. The appeal on ground (g) therefore fails.

Thomas Shields

INSPECTOR