



Appeal Decision

Site visit made on 9 September 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2021

Appeal Ref: APP/P0240/C/21/3268126

1A Windsor Way, Sandy SG19 1JL

- 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 J Cooper against an enforcement notice issued by Central Bedfordshire Council.
 - The enforcement notice, numbered CB/EN/20/0486, was issued on 7 January 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a wall and gates along the front boundary of the property with the highway.
 - The requirements of the notice are to demolish the wall and gates.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) 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.
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Decision

1. It is directed that the enforcement notice be varied by deleting the text at section 5 (What you are required to do) and replacing it with the following:
 1. Demolish the wall and gates; or
 2. Lower the height of the wall and gates so that no part of them exceed 1m in height above ground level.
2. Subject to this change, the appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (f)

3. The appellant argues that the requirement to remove the wall and gates in their entirety is excessive and that they could instead be reduced in height to 1m. This would reflect the permitted development provisions relating to walls and gates.
4. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the removal of the wall and gates in their entirety. This is consistent with the purpose of remedying the

breach of planning control in accordance with (s173(4)(a)), the breach being comprised of the wall and gates in their entirety.

5. That said, the enforcement regime is intended to be remedial rather than punitive. While the appellant cannot claim permitted development rights retrospectively in respect of any part of the development already carried out, such rights could be claimed in the future and would enable the appellant to replace the wall and gates with items not exceeding 1m in height. This represents a realistic 'fallback position' for the appellant. In these circumstances, allowing the appellant to reduce the wall and gates in height is an obvious alternative, which would achieve essentially the same outcome as removing and replacing them, but with less cost and disruption. By not including this less disruptive option, I consider the requirements of the notice to be excessive.
6. While there is no scheme before me setting out a detailed proposal for modifying the wall and gates, I do not consider it necessary in this instance, since it would be a straightforward matter to describe an amended requirement in the notice so as to reflect the permitted development rights available. Adopting this approach would not result in any less control over the finalised outcome than the appellant exercising his permitted development rights. I will therefore set this out as an alternative to the option of total removal.
7. For these reasons, the appeal on ground (f) succeeds.

The appeal on ground (g)

8. It is argued that the period allowed to remove the wall and gates is insufficient due to difficulties arising from the Covid-19 pandemic. However, even allowing for that, the 3 months specified in the notice is a good length of time in my view, given the small section of wall it relates to. Moreover, it is desirable to resolve the breach of planning control without undue delay to ensure that the notice achieves its purpose. The evidence before me does not show any specific need for the 6 months the appellant suggests. Accordingly, the appeal on ground (g) fails.

Other matters

9. The appellant has raised various matters relating to the merits of the wall and gates. However, since there is no deemed planning application (since the prescribed fees have not been paid) it is not open to me to consider the planning merits of the wall.

Peter Willows

INSPECTOR