



Appeal Decision

Site visit made on 12 October 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 25 October 2021

Appeal Ref: APP/N4720/C/21/3273325

148 Potternewton Lane, Chapel Allerton, Leeds LS7 2EG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Miss Razzie Lulagala against an enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 23 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a timber fence, kickboards and posts that exceed two metres in height, located on the side and rear boundaries of the property, which exceeds the height permitted under Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
- The requirements of the notice are:
EITHER dismantle all the fencing panels, concrete posts and kickboards, and remove them and all materials used in the erection of the fencing from the land,
OR Reduce part or parts of the unauthorised fence, kickboards and posts so that no part exceeds two metres in height from the original ground level and remove all the excess materials from the land.
- The period for compliance with the requirements is one year.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

The ground (a) appeal and the Deemed Planning Application

Preliminary Matters

1. The appellant points out that there are other similar fences in the immediate vicinity but the Council has not taken enforcement action in those cases. Whether or not enforcement action should be taken is a matter for the Council and I can only consider the matters before me.
2. The appellant also indicates that the fence does not need planning permission as it involved an alteration and its former height has not been exceeded. It is clear from the appellant's own evidence that the previous boundary treatment was removed in its entirety. The fence is a new structure, it is not maintenance, improvement or an alteration and planning permission is required.

Background and Main Issue

3. The terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for the erection of a timber fence, kickboards and posts.

4. The main issue is the effect of the development on the living conditions of neighbouring occupants with regard to outlook.

Reasons

5. The appeal property is a semi-detached house, which is sited on a triangular-shaped corner plot at the junction of Potternewton Lane with Miles Hill Grove. The surrounding area is residential. Fencing has been erected along the side and rear boundaries, which is constructed from timber panels with concrete kickboards and posts. There is also trellis fencing along the top in parts.
6. The appellant explains that the garden to the property was previously neglected, had been subject to fly tipping and the boundary hedge was considerably overgrown. It has been necessary to install high fencing and to replace the hedge to increase security, as the house has been subject to frequent burglaries. The appellant argues that the height of the fence is critical for stability as the neighbours' land is significantly higher. In addition, it would be possible to obtain views into the appellant's garden if the fence were lowered. It is said that the works were carried out with the neighbours' agreement, and that the fencing is robust and has been properly installed.
7. I saw that there is a mix of boundary treatment in the area and high hedges or fences are not uncommon. However, the rear gardens of the properties are modest in size due to the development layout. At approximately 2.5 metres, the fence is a dominant structure that appears out of place in its context. Although well-built, the height and solid form of the majority of the fence results in an oppressive appearance. It is likely to have an adverse effect on the outlook from the rear windows and gardens of the properties either side, even taking account of the variation in land levels.
8. The appellant's concerns about security are valid. However, the fence is sited along the boundaries with neighbouring gardens that are private and enclosed. As such, it would only serve to prevent access from those gardens, as opposed to a fence that adjoins an alley with public access, for example. Intruders would have to enter the neighbour's land and scale the fence. Consequently, I do not consider that the need for a high security fence in this context is justified. Although the appellant is concerned about overlooking, I saw that the rear garden at the appeal property is not completely private in any event, due to the development layout, which allows views from first floor windows of other houses in the vicinity.
9. I have considered the appellant's personal circumstances. However, I find that, on balance, the harm resulting from the development is such that planning permission should not be granted. Crucially, the appellant would be allowed to retain a fence, albeit at a lower height. This would provide a level of security and privacy, which is a reasonable compromise and proportionate in this context.
10. I conclude that the height of the fence is such that the development would have an adverse effect on the living conditions of neighbouring occupants with regard to outlook. The development is contrary to Policy P10 of the Leeds Core Strategy (2014), and Policies N25 and GP5 of the Leeds Unitary Development Plan (Review 2006) which, among other things, seek to promote high quality design and resist development that would harm amenity. The development does not meet the aims of the National Planning Policy Framework insofar as it

seeks to promote good design and a high standard of amenity for existing and future occupiers.

The ground (f) appeal

11. The appeal has been made on ground (f), that the steps are excessive to achieve the statutory purpose behind the enforcement notice. The purposes are set out in Section 173(4) of the 1990 Act as (a) remedying the breach by making any development comply with the terms of any planning permission which has been granted, by discontinuing any use of the land or by restoring the land to its condition before the breach took place, or (b) remedying any injury to amenity which has been caused by the breach.
12. The purpose of the enforcement notice is twofold. The first step seeks the removal of the unauthorised works. As such, its purpose is to remedy the breach of planning control. However, the Council has also included a step that would amount to 'under-enforcement', that is, enabling the retention of the fence at a reduced height, in line with that 'permitted', under the GPDO. Permitted development rights cannot be applied retrospectively. However, the Council has recognised that requiring complete removal would be unlikely to achieve anything and could, therefore, be excessive. The grant of planning permission under the GPDO represents a realistic fallback position and is an 'obvious alternative' that could be achieved with less cost and disruption.
13. I consider therefore that the steps offered are not excessive due to the option to retain a fence at a lower height. Consequently, the appeal on ground (f) must fail.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

15. 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 1990 Act as amended.

Debbie Moore

Inspector