



Appeal Decisions

Site visit made on 5 January 2022

by R Curnow MA(TCP) BSC(Hons) CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th January 2022

Appeal A Ref: APP/P0119/C/21/3285087

Land at Holly Tree Cottage, 3 Lower Steet, Dyrham, SN14 8EU

Appeal B Ref: APP/P0119/C/21/3285088

Land at Holly Tree Cottage, 3 Lower Steet, Dyrham, SN14 8EU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
 - Appeal A is made by Mr Jeremy Johnson against an enforcement notice issued by South Gloucestershire Council ('the Notice').
 - Appeal B is made by Mrs Amy Johnson against an enforcement notice issued by South Gloucestershire Council ('the Notice').
 - The notice, numbered COM/20/0141/0D/1, was issued on 11 October 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a 1.87 metre fence marked blue in the approximate position on the attached plan and on the photograph marked Appendix A to this notice.
 - The requirements of the notice are: Permanently remove the fence and constituent materials (as shown in the approximate area marked blue on the attached plan for illustrative purposes) from the land.
 - The period for compliance with the requirement is: One 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.
-

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Reasons

Ground (c)

2. An appeal made under ground (c) of S174 is that the matters alleged in the Notice (if they occurred) do not constitute a breach of planning control. In an appeal lodged on a legal ground, such as this, it is for the Appellants to prove their case.
3. The fence that is the subject of the appeal consists of four timber panels that have been erected to the front of the Holly Tree Cottage, on one side of its access drive from the public highway, Lower Street.
4. Permitted development rights for the erection of a means of enclosure are set out in Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('GPDO'). In essence, in respect of this property, Class A allows for the erection of a fence of up to 2m in height if it does not lie adjacent to a highway. If the fence lies adjacent to a highway, the maximum height allowed by the GPDO is 1m.

5. The Council's case is that the fence is adjacent to the highway and exceeds 1m in height. There is no dispute between the parties that the fence is over 1m in height; therefore, the main issue in this appeal is whether it lies adjacent to the highway.
6. The land on which the fence lies is at a significantly higher level than Lower Street. Where this land meets the highway, it is retained by a vegetated earth bank and, where it meets an access drive to the property, it is retained by a natural stone wall.
7. Neither the 1990 Act nor the GPDO defines the word 'adjacent'. The courts have held that this does not mean that a fence has to abut the highway. Thus, a fence can be set back from the highway but still adjacent to it. Each case has to be determined on its merits, as a matter of fact and degree.
8. Here, due to the curving nature of the fence as it firstly runs parallel to Lower Street and then the access drive, the distance between the fence and the highway increases as it runs back into the property. However, as pointed out by the Council, as the fence was erected as a single operation, if one part of it lies adjacent to the highway the requirement of the Notice would apply to all of it.
9. The fence is set back from the top of the earth bank and retaining wall along the drive. The area between them is either grassed or has bushes growing from it. In addition, a utility pole is sited there.
10. Contrary to the Council's view, to my mind, the fence does not form "the effective boundary between the public domain of the highway and the appellant's private garden area". In my opinion, the bottom of the bank clearly appears as the boundary between the Appellant's property and the public highway, and I am of the view that the average person viewing the site would quickly conclude the same way.
11. This is, however, different from whether the fence is adjacent to the highway. The parties agree that, at its closest point, the fence is some 1.8m back from the highway. I find this to be a considerable distance in respect of the terms of Class A. Furthermore, in the street scene the fence does not read as being adjacent to the highway in the manner expressed therein.
12. I find that, as a matter of fact and degree, although the fence exceeds 1m in height, as it does not lie adjacent to the highway it is permitted development under the terms of Class A.
13. Therefore, there has been no breach of planning control and the appeal under Ground (c) succeeds.

Conclusion

14. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeal on ground (f) does not fall to be considered.

R Curnow

Inspector