



Appeal Decisions

Site visit made on 13 January 2022

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th January 2022

Appeal A Ref: APP/B1605/C/21/3283541

Appeal B Ref: APP/B1605/C/21/3283542

Land at 11 Welland Drive, Cheltenham, Gloucestershire GL52 3HA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Andrew Mukori (Appeal A) and Mrs Gamuchirai Mukori (Appeal B) against an enforcement notice issued by Cheltenham Borough Council.
- The enforcement notice was issued on 25 August 2021.
- The breach of planning control as alleged in the notice is without planning permission the erection of a timber fence in excess of 1 m, adjacent to a highway used by vehicular traffic.
- The requirements of the notice are to reduce the height of the fence to no more than 1 m and remove the resulting waste from the site.
- The period for compliance with the requirements is two months.
- The appeals are 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 for either Appeal A or Appeal B, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals succeed in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matter

1. The matters set out by the appellants in support of their appeals, including references to other boundary enclosures in the locality, largely relate to the planning merits of the fence. However, as no fee was paid there is no deemed application arising from a ground (a) appeal. Therefore, planning merits considerations are not before me.

Appeals A and B

Ground (f) appeals

2. The ground of appeal is that the requirements of the enforcement notice are excessive.
3. An enforcement notice can have two purposes. Firstly, it can remedy the breach of planning control, including by making the development comply with the terms of any planning permission granted in respect of the land, or by restoring land to its condition prior to the breach taking place. Secondly, a notice can remedy any injury to amenity caused by the breach.
4. The notice attacks a timber fence around 2 m high, erected adjacent to the street at a residential property. Although the notice gives no indication as to

whether one or both of the above purposes are relevant, it does not require total removal of the fence. Reduced to 1 m high, the fence would not be dissimilar in height to the wall it replaced. Moreover, reducing the fence to 1 m high would bring it within the terms of the planning permission granted for a fence adjacent to a highway in the GPDO¹ at Article 3, Schedule 2, Part 2, Class A. Therefore, the purpose of the notice must be to remedy both the breach and the injury to amenity caused by the height of the fence.

5. Simply painting the fence would not remedy the breach. Varying the notice to retain the fence at its existing height would fall outside the scope of what can be achieved under ground (f); where there is an appeal on ground (f) but not on ground (a) and the purpose of the notice is to remedy the breach, the notice cannot be varied to attack its substance. In any event, painting the fence alone would not remedy the injury to amenity identified in the notice. Therefore, the above does not represent an obvious alternative to what the notice requires. The appellants did not suggest another alternative and to my mind, there is none that would also achieve the purpose of the notice. Therefore, in my view reducing the fence to 1 m high is a proportionate way in which to remedy the breach and the injury to amenity.
6. Accordingly, what is required by the notice is not excessive and the ground (f) appeals fail.

Ground (g) appeals

7. The ground of appeal is that the time for complying with the requirements of the notice falls short of what should reasonably be allowed.
8. The compliance period is described in the notice as beginning from the date of issue, rather than the date the notice takes effect. Consequently, if I were to dismiss these appeals and uphold the notice as issued the appellants would then straight away be in breach of the notice. It must follow that the compliance period specified in the notice as issued is unreasonably short.
9. In the absence of anything to suggest otherwise, I have assumed that what the Council actually meant was for the compliance period to be two months from the date the notice takes effect. I recognise that reducing the fence to 1 m high is likely to be a straightforward matter to arrange and have carried out by a suitable contractor within a couple of months or so. Nevertheless, I am also mindful that by the end of August this year it is likely that recent planting behind the fence would have had a full growing season in which to mature and thereby act as a more effective screen from the street. Furthermore, there is still ongoing uncertainty regarding the potential reintroduction of restrictions on movement to manage the spread of COVID-19. Given that is the case, it would seem sensible to maintain an opportunity for the appellants' children to access suitably private and secure outdoor space at their property as far as possible. A compliance period which took these factors into account would therefore strike a more appropriate balance between remedying the planning harm identified in the notice as soon as is practicable, whilst also enabling a reasonable degree of privacy and security to continue to be provided at the property.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

10. Accordingly, in my view eight months is a reasonable period for compliance. The ground (g) appeals succeed to that extent.

Conclusion

11. For the reasons given above I conclude that the period for compliance falls short of what is reasonable. I shall vary the notice prior to upholding it.

Formal Decisions

12. Appeals A and B: It is directed that the enforcement notice is varied by at paragraph 5 substituting "*two months from the date of the notice*" with "*eight months from the date the notice takes effect*" as the period for compliance. Subject to this variation the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR