



Appeal Decisions

Site visit made on 14 December 2021

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal A: APP/Q4625/C/21/3267557

Appeal B: APP/Q4625/C/21/3267558

7 Land Lane, Marston Green, Birmingham, B37 7DE

- 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 Act").
- The appeals are made by Mr John Simpson (Appeal A) and Mrs Jackie Diamond (Appeal B) against an enforcement notice issued by the Solihull Metropolitan Borough Council.
- The enforcement notice was issued on 21 January 2021.
- The breach of planning control alleged in the notice is without planning permission; unauthorised operational development consisting of the erection of a 3 metre high corrugated metal fencing at the front of the property in the location marked green on the enclosed plan.
- The requirements of the enforcement notice are:
 - a) Remove the 3 metre high corrugated metal fence in its entirety from the land, and remove the resultant materials from the land.
 - OR
 - b) Reduce the height of the 3 metre high corrugated metal fence to a maximum height not exceeding 2 metres, and remove the resultant materials from the land.
- The period for compliance with the requirements is 2 months.
- The appeals proceed on the grounds set out in section 174(2)(b), (c), (e), (f) and (g) of the Act.

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld as set out below in the Formal Decision.

Appeal site and background

1. The appeal site comprises a semi-detached property with front forecourt with gates at the side and driveway. The front forecourt is separated from an adjacent single storey property by fencing. The set back 3m high section of corrugated fencing nearest the gates is subject of the enforcement notice, but the smaller section nearest the highway is not.
2. The appellants' written submissions include various comments which seek to explain the reasoning for erecting the fence, to justify why it is needed and the acceptability of its appearance. However, these are all matters which relate to the merit of granting planning permission. Since planning permission has not been sought through an appeal on ground (a) I cannot take them into account. As such, they are not relevant to the grounds of appeal before me.

Ground (e)

3. The ground of appeal is that copies of the enforcement notice were not served as required by section 172 of the Act.

4. 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. As such, it is for the Council to decide who is materially affected by the notice, but it runs the risk of the notice being quashed if it exercises its discretion wrongly.
5. Notwithstanding the above, s176(5) of the Act gives me the power to disregard any failure to serve the notice on anyone, as required, if neither the appellant nor the person concerned has been substantially prejudiced by the failure to serve them.
6. The Council state¹ they served a copy of the notice on "Mr Simpson, Jaqueline Diamond and the owner and any occupiers" and I note these are listed in the notice itself. The appellant (Simpson) however states that he was the only person served with a copy, by postal service, while the others were not.
7. In this regard the Council unfortunately have not provided copies of any signed certification of service of the notices, or any other evidence as to their date and method of service, to establish that separate copies of the notice were indeed individually served on the intended recipients as stated. This lack of crucial evidence is surprising given that they have been aware of the appellant's ground (e) appeal from the outset. The absence of such evidence in many instances would likely result in an enforcement notice being quashed.
8. However, I note the second person named in the notice is the other appellant (Diamond). Hence, even if there was a failure of service as claimed, she has nonetheless been able to respond to the notice by appealing against it. She has not therefore been substantially prejudiced if there was such a failure, and hence in such circumstances I would disregard the failure in accordance with s176(5).
9. In respect of any other owners or occupiers, the appellants have not provided evidence of who such parties are, their interest in the land, how they were materially affected by the notice, or how those parties or the appellants have been prejudiced by any failure of service. As such, I am unable to find that there has been a failure of service in respect of unknown other parties in these circumstances. For these reasons the appeal on ground (e) fails.

Ground (b)

10. An appeal on ground (b) is a claim that those matters (i.e. the matters stated in the notice which may give rise to the breach of planning control) have not occurred as a matter of fact. The appellants argue that the section of fence subject of the notice and appeal is a replacement section and not entirely new. However, that in itself acknowledges that the erection of the fencing *has occurred*. Whether or not it needs planning permission is dealt with in ground (c) below. The appeal on ground (b) therefore fails.

Ground (c)

11. An appeal on ground (c) is a claim that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof falls to the appellant and the test of the evidence is on the balance of probability.

¹ Council Statement of Case, para. 3.9-3.10

12. The section of fencing subject of the appeal is a 3m high structure fixed to the ground and falls within the meaning of a 'building' as defined by s336 of the Act. It is also operational development as defined by s55 of the Act. As such it requires planning permission.
13. Article 3 and Class A of Part 2 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for new fencing and walls up to 1m or 2m in height, or if maintaining a section of fence any replacement section is no higher than the original.
14. However, the appeal fencing exceeds the GPDO 2m height limitation for new fencing. Additionally, there is no convincing evidence, on the balance of probability, to indicate that it replaced a 3m high original fence. Consequently, I find it does not benefit from planning permission under the GPDO.
15. Since the fence requires planning permission, but none has been granted, it thereby constitutes a breach of planning control by virtue of s171A(1) of the Act. The appeal on ground (c) therefore fails.

Ground (f)

16. For an appeal under ground (f) to succeed it is important to understand the purpose of the notice requirements. Those are either; to remedy the breach of planning control (s173(4)(a) of the Act), or, to remedy any harm to amenity resulting from the breach, s173(4)(b).
17. In this regard the notice requires the appellant to either remove the 3m high section of fence completely, or, alternatively, to reduce it so that it does not exceed 2m in height. I consider that the requirements are entirely reasonable and do not exceed what is necessary in order to satisfy the purposes of the notice under s173(4)(a) and (b). Moreover, the appellant has not proposed any lesser requirements which would also serve to remedy the breach and remedy any harm to amenity. Consequently, I find that the requirements are not excessive and the appeal on ground (f) must also fail.

Ground (g)

18. 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 2 months.
19. The appellant seeks a period of 6 months to comply with the notice. This is stated to be in the context of current restrictions relating to the Coronavirus pandemic, which were in place at the date of submitting the appeal. However, the notice requirements do impose an overly difficult operation to complete and I see no reason now why the fence could not be removed or reduced in height within the specified 2 month period. Accordingly, the appeal on ground (g) fails.

FORMAL DECISION

20. The appeals are dismissed and the enforcement notice is upheld.

Thomas Shields INSPECTOR