



Appeal Decision

Site visit made on 23 March 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 11th April 2022

Appeal Ref: APP/E3715/C/21/3286562

The land at 27 Wesley Road, Rugby, Warwickshire CV21 4PG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Bradley Simpson against an enforcement notice issued by Rugby Borough Council.
- The notice was issued on 1 October 2021.
- The breach of planning control as alleged in the notice is: Without planning permission the erection of fencing to the front and rear of the land.
- The requirements of the notice are to:
 - (i) Reduce the fencing along the boundary shown coloured blue on the attached plan to 2 metres from original ground level at the land
 - (ii) Reduce the fencing along the boundary shown coloured green on the attached plan to 1 metre from the original ground level on the land
- Or
 - (iii) Demolish /dismantle and remove the fencing to the rear and front of the land shown coloured blue and green on the attached plan
 - (iv) Remove all material from the land arising from compliance with (i) (ii) and (iii)
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) of the Town and Country Planning Act 1990 as amended.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. 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.

The appeal under ground (a) and the deemed planning application

Main Issue

2. The main issue is the effect of the development on the character and appearance of the area.

Reasons

3. Wesley Road is a cul de sac with a mix of detached and semi-detached dwellings with pockets of more recently built dwellings within a largely residential area. The appeal dwelling and No 29 make up a pair of older semi-detached properties on the north side of the road. However, despite the mix of property styles of varying ages, the overriding character of the frontages is of

modest front gardens with either open frontages or low level boundary treatments made up of a mixture of walls and hedges.

Fencing to the front

4. The part of the development to the front consists of four timber panels with concrete gravel boards and concrete posts. The fencing panels rise in height towards the appeal dwelling as there is a slope downwards towards the road. The closest fence post to the road is around 1.6 metres with the post closest to the dwelling being around 10 cm shorter.
5. The front fencing replaced a 6 foot hedge that was overgrown and neglected and the appellant states that the appeal fencing is a maintenance free option. Whilst there are hedges as a boundary treatment along Wesley Road, fencing at the front of dwellings is not part of the character of the surrounding area and the replacement of a hedge with a fence is not a like for like replacement in terms of appearance. The prominent location of the fencing to the front of a sloping site and the solid nature of the fencing appears out of keeping and overbearing in comparison to other boundary treatments.
6. Although the appellant states that the front fence is not a safety hazard in its location at the end of a cul de sac, safety is not an issue raised by the Council in its reasons for issuing the notice. The example provided by the appellant of a front fence of varying heights is in a different location with a different panel arrangement and has no slope which is also not comparable to the appeal site. For the reasons given, the front fencing does harm the character and appearance of the area.

Fencing to the side boundary to the rear

7. The appellant has continued with the same style of fencing along the side boundary with No 29 to the rear with the addition of trellising to some of the fence panels closest to the appeal dwelling. In terms of height, the fencing ranges between just over 270 cm and 230cm nearest to the dwelling. The part of the garden of No 29 to the other side of the fencing is roughly triangular in shape and is a modest size with the narrowest part of the triangle to the rear boundary of No 29. The trellising makes up a small proportion of the fencing and does not in my view break up its solid appearance.
8. The fencing along the side boundary does dominate the appeal garden as a result of its length, the height of the fencing and the significant slope along the rear boundary. The visual effect from the modest garden of No 29 is likely to be similar. Whilst the extent of views is not comparable to the fencing to the front, visually, the fencing is likely to be overbearing and dominant in views from the rear of No 29.
9. Although the appellant has referred to the rear fence addressing previous overlooking issues, it is not clear what other boundary treatment options were not considered or why the fence is significantly over 2 metres. Whilst the appellant has referred to climbers in front of the fencing and painting it green, neither of these suggestions would overcome the issue of scale identified by the Council and climbers could only be placed within the appeal site.
10. The appellant has referred to the presence of a newly erected fence to the rear of the public footpath to the other side of No 29 also being in excess of 2 metres. I have no details as to whether or not there is planning permission for

that fence. However, in terms of location and relationship with nearby occupiers, the fence is not comparable to the development. Whilst there is a rear fence to the appeal site, it is also not comparable to the development in terms of length or overall scale or position in relation to adjoining occupiers. It remains the case that each development has to be assessed upon its own merits and circumstances.

11. For the reasons given, I do consider that both the front and rear fencing that make up the development do therefore harm the character and appearance of the area. The development is therefore in conflict with the Local Plan Policy SDC1 and the Sustainable Design and Construction SPD which both support development of a scale that responds to the character of the area.
12. The appellant has referred to the practical difficulties of complying with the notice in terms of reducing the fence to 2 metres or completely removing the fence and the likely cost of both options. However these matters do not overcome my findings on harm. The appeal under ground (a) therefore fails.

The appeal under ground (f)

13. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. An appeal under ground (f) is limited to consideration of whether the requirements of the notice exceed what is necessary to remedy the breach or remedy any injury to amenity. It is therefore necessary to establish whether the purpose of the notice is to remedy the breach or remedy any injury to amenity. The steps set out in the notice require both fences to be removed entirely or for reductions in height.
14. Step (iii) seeks to restore the land back to its condition before the breach took place while steps (i) and (ii) are aimed at remedying the breach of planning control by making the appeal development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. As any planning permission in this case is one granted by the General Permitted Development(England) Order 2015 as amended, subject to the stated conditions and limitations the requirements fall within the purpose of S173(4)(a) of the 1990 Act which is to remedy the breach.
15. The appellant has referred to cutting the nearest panel to the pavement at an angle and lowering the post closest to the pavement as an alternative to the current requirements. However, removing part of one panel would not remedy the breach. In summary, the purpose of the notice is to remedy the breach and the requirements are not excessive. Consequently, the ground (f) appeal also fails.

Conclusion

16. 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 application deemed to have been made under section 177(5) of the 1990 Act as amended.

E Griffin INSPECTOR