



Appeal Decision

Site visit made on 24 January 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2022

Appeal A Ref: APP/E2001/W/21/3285153

62 Elloughton Road, Brough HU15 1AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Elaine Farnill against the decision of East Riding of Yorkshire Council.
- The application Ref 21/02450/PLF, dated 22 June 2021, was approved on 24 September 2021 and planning permission was granted subject to conditions.
- The development permitted is the erection of 1.2m high railings with electric gate and 1.4m high pillars at front following removal of existing unlawful railings and pillars.
- The condition in dispute is No 1 which states that: The existing railings and pillars shall be reduced to the approved height within 4 months of this decision.
- The reason given for the condition is: This condition is imposed because the existing development is unauthorised and contrary to Policy ENV1 of the East Riding Local Plan

Summary of Decision: The appeal is allowed, the disputed condition is deleted and substituted for a new condition.

Appeal B Ref: APP/E2001/C/21/3285151

62 Elloughton Road, Brough, East Riding of Yorkshire HU15 1AL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Elaine Farnill against an enforcement notice issued by East Riding of Yorkshire Council.
- The enforcement notice was issued on 8 September 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a gate, pillars and boundary fence above 1 metre in height and adjacent to a highway.
- The requirements of the notice are: remove the gate, pillars and railings (shown in blue on attached plan) or reduce gate, pillars and railings to no higher than 1 metre in height.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

BACKGROUND

1. Railings, a gate and brick pillars have been erected to the front of the appeal property. Planning permission was refused for the erection of pillars, railings

- and a gate on the Land on 15 August 2019¹. A subsequent appeal against that refusal was dismissed on 24 January 2020.²
2. A second application was submitted on 21 July 2020 to widen the existing drive, erect a new 2m high pillar following removal of the existing pillar and reduce the height of the existing railings to 1.6m, existing gates to 1.6m in height and existing brick pillar to 2m in height.³ That was refused on 17 November 2020 and was also subject of an appeal which was dismissed on 25 May 2021.⁴
 3. A third application was submitted on 22 June 2021 for the removal of the existing unlawful railings and pillars and erection of 1.2m high railings with electric gate and 1.4m high pillars.⁵ That application was approved on 24 September 2021 subject to conditions (the September 2021 permission). Condition 1 of that permission stated that the existing railings and pillars shall be reduced to the approved height within 4 months of the decision. Appeal A is an appeal against the imposition of condition 1.
 4. Prior to the grant of the September 2021 permission, the Council issued an enforcement notice on 8 September 2021 directed against the gate, pillars and railings. Appeal B is the appeal against the enforcement notice.
 5. The outcome of Appeal A has implications for how Appeal B can be dealt with on grounds (f) and (g). Thus, I have dealt with both appeals in a single decision letter.

APPEAL A

Preliminary Matters

6. The Council's description on the September 2021 decision notice indicates permission was granted for the existing and unauthorised gate, pillars and railings to be removed before a lower gate, pillars and railings are erected. However, the Council indicates that the permission was not granted to remove the existing unlawful railings and pillars.
7. The application form is clear that the existing railings and pillars would be altered to reduce their height. Moreover, Condition 3 requires the development to be carried out in accordance with the approved plans. Approved plan 21/69/02A shows the erection of railings, a gate and pillars to the front of the property. The approved plan clearly shows that the lower part of the gate, pillars and railings would be as built. Approved plan ref: 21/69/02A also clearly states that the existing 'fencing' is to be 'reduced in height' and that the pillars are to be 'reduced' and the existing coping stones re-used.
8. Furthermore, there is nothing within the original application submissions which suggests the existing railings, gate and pillars would be removed before new ones erected. Whilst evidence beyond the four corners of the decision notice cannot alter the apparent meaning of the permission, further extrinsic evidence may be admitted in order to resolve ambiguity. In this instance, my attention is drawn to the Council's officer report in respect of the application. From the

¹ LPA Ref: 19/01887/PLF

² PINS Ref: APP/E2001/D/19/3239749

³ LPA Ref: 20/02339/PLF

⁴ PINS Ref: APP/E2001/D/21/3268527

⁵ LPA Ref: 21/02450/PLF

outset, that document makes clear at paragraph 1.1 that the Council were considering whether or not to grant planning permission for the erection of railings and a gate at 1.2m in height and brick pillars at 1.4m in height. That is essentially the development shown on the approved plan.

9. As a result, I consider that, despite the description of development, the decision notice cannot be reasonably interpreted as having granted planning permission for the demolition of the existing development and the erection of new railings, gate and pillars. On the contrary, I am satisfied that taking a fair reading of the decision notice and the conditions attached to it, the erection of railings, a gate and pillars at the height shown on the approved plans.
10. In light of the principles laid down in *Finney*⁶, in such instances the Inspector has the powers to amend the description of the development should they consider it necessary. I have therefore determined this appeal on the basis that the September 2021 permission granted planning permission for the erection of railings, a gate and brick pillars as shown on the approved plans.

Main Issue

11. The main issue is whether the disputed condition is necessary and enforceable.

Reasons

12. Section 70(1)(a) of the 1990 Act affords local planning authorities the power to grant planning permission subject to such conditions as they think fit. However, the courts have limited a decision-maker's discretion to impose conditions in three ways. Firstly, a condition must fulfil some planning purpose. Secondly it should fairly and reasonably relate to the development being allowed. And finally, it should not be unreasonable.⁷ These tests are endorsed in policy by the National Planning Policy Framework, paragraph 56 setting out that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
13. In this instance the approved development essentially comprises the erection of railings, a gate and brick pillars albeit ones which have already been constructed. The permission is granted subject to the limitation that the railings and gate shall be reduced from their as built form to 1.2m high and the pillars to 1.4m high. That limitation is set out in Condition 3 which requires the development to be carried out in accordance with the approved plan. Condition 1 requires the reduction to the approved height to be carried out within 4 months.
14. The Council considered the effects of the higher railings and pillars in the previous planning application in July 2020. In that instance, permission was sought for the pillars to be 2m in height with the railings and gates to be 1.6m in height. The Council considered the development at those heights would have a harmful effect on the character and appearance of the area. This was supported by an Inspector on appeal in May 2021 who dismissed the appeal,

⁶ *John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited* [2019] EWCA Civ 1868, 2019 WL 0569911

⁷ *Newbury DC v SSE* [1981] AC 578

finding that the development in that form materially harms the character and appearance of the area.

15. The appellant has not advanced any argument that Condition 1 is not necessary to make the development acceptable in planning terms on the basis that the railings, gate and pillars at the greater height would not be harmful to the character and appearance of the area. As such, I have no reason to conclude differently to the previous Inspector. Indeed, it was evident from my site visit that the railings, gate and pillars at the increased height appeared somewhat obtrusive and incongruous in the street scene, such that harm arises to the character and appearance of the area. As a result, I find Condition 1 is necessary.
16. Turning then to the time frame element of condition 1. The appellant asserts that the condition is tantamount to a condition requiring completion of the development which in itself would be unnecessary and unenforceable. However, that is not the case here. As I have set out above, the September 2021 permission granted planning permission for the erection of the railings, gates and pillars. The requirement to reduce the height in condition 1 is not therefore a requirement to complete the development. Rather, it is a requirement to alter the approved development so that it becomes acceptable in planning terms. There is nothing erroneous about such an approach.
17. Nevertheless, when requiring works to be done by condition in retrospective cases, it is necessary for the condition to also carry a sanction for non-compliance to ensure it is enforceable. The standard sanction is for the development to be demolished if the alterations are not carried out in the specified timescale. In this case Condition 1 does not carry such a sanction. Thus, if the reduction in height is not carried out within 4 months, the only power available to the Council would be to enforce against the breach of condition, not the erection of development without planning permission. Thus, I find Condition 1 in its current form is not enforceable and should be deleted.
18. Nonetheless, I find Condition 1 to be necessary to make the development acceptable, and can be made enforceable by the inclusion of a sanction. The appropriate sanction in this instance would be for the development to be demolished in the event the reduction in height is not carried within 4 months of the date of decision. In those circumstances, under the powers afforded to me by under section 79(1) of the 1990 Act, I will impose a fresh condition requiring the reduction works to be carried out in 4 months with a sanction in the event of non-compliance.

Other Matters

19. The appellant requests that a condition be imposed requiring a time limit of 3 years for the commencement of the development. However, such a condition would not be necessary since the development subject of the September 2021 permission has already commenced.

Conclusion

20. For the reasons given above, having regard to all matters raised, the appeal is allowed and I shall vary the planning permission by deleting the disputed condition and substituting it for a new condition.

APPEAL B

The appeal on ground (f)

21. Section 173(4) of the Act sets out that the purpose of an enforcement notice is either to remedy the breach of planning control or remedy any injury to amenity which has been caused by the breach. An appeal on ground (f) is made on the basis that the steps required by the enforcement notice to be taken exceed what is necessary to either remedy the breach or remedy the injury to amenity.
22. In this case, the notice does not specify which of the two purposes it seeks to achieve. Nevertheless, the requirements of the notice are to either remove the development or reduce the height of the gate, pillars and railings to no higher than 1m. The notice is clear from section 4 that the reduction in height is because planning permission would be granted for the development up to 1m height by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) as permitted development under Class A of Part 2 of Schedule 2 of that Order.
23. As a result, it seems to me that the purpose of the notice is to remedy the breach of planning control, either by restoring the land to its condition before the breach took place or by ensuring it would comply with the terms of any planning permission granted by the GPDO.
24. Nonetheless, planning permission was also granted in September 2021 for the reduction in the height of the gate and railings to 1.2m and the pillars to 1.4m. No such planning permission existed at the date the notice was issued thus the notice could not have required compliance with that permission. Nevertheless, the situation before me now is that there is an extant permission in place. There is no reason before me why the permission would not be capable of implementation. Thus, the notice could be varied to require compliance with the September 2021 permission. This would be a lesser step that would remedy the breach of planning control by ensuring the development would comply with the terms of a planning permission. I note that the Council raise no concern with varying the notice to require compliance with that permission.
25. It would not be appropriate, however, to remove the requirement to demolish the development nor the requirement to reduce the height to not more than 1m. This is because either of those steps would still remedy the breach of planning control. As a result, the notice can be varied to include the additional alternative to alter the development to comply with the terms of the planning permission 21/02450/PLF dated 21 September 2021.
26. The appeal on ground (f) therefore succeeds.

Appeal on ground (g)

27. An appeal on ground (g) is made on the basis that the time for compliance given in the notice is too short. The notice gives a time period of 3 months for compliance. The appellant argues that 3 months is insufficient due to contractor constraints. It is instead suggested that a period of 6 months would be required.
28. Nevertheless, very little evidence has been provided which demonstrates that there are difficulties with contractors that would justify an extended period of

6 months. On the face of it, the requirement to either remove the development or reduce its height seems to me to be works which would not take an undue length of time. A period of 3 months is a reasonable timeframe for those works to be carried out.

29. Nevertheless, I am conscious that the September 2021 sets a timescale of 4 months for the reduction works to be carried out. Given that the notice as varied includes a requirement to comply with the approved plans of the September 2021 permission, and which in itself gives 4 months for the reduction works to be undertaken, then it seems reasonable to me to extend the compliance period to 4 months to reflect that.

30. The appeal on ground (g) is therefore successful but only to a limited extent.

FORMAL DECISIONS

Appeal A

31. The appeal is allowed and the planning permission Ref 21/02450/PLF for the erection of 1.2m high railings with electric gate and 1.4m high pillars at front at 62 Elloughton Road, Brough HU15 1AL granted on 24 September 2021 by East Riding of Yorkshire Council, is varied by deleting condition 1 and substituting it for the following condition:

1. The development hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within 14 days of the date of failure to meet the following requirement: within 4 months of the date of this decision, the railings, gate and pillars shall be reduced to the approved height as shown on the approved plan Ref: 21/69/02A.

Appeal B

32. It is directed that the enforcement notice be varied by:

- inserting the following words in section 5 of the notice after the word 'height': "Or, reduce the height of the gate, railings and pillars in complete accordance with planning permission reference 21/02450/PLF"; and,
- by the deletion of 3 months and the substitution of 4 months as the period for compliance.

33. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

J Whitfield

INSPECTOR