
Appeal Decisions

Site visit made on 8 June 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 08 July 2022

Appeal Refs: APP/N4720/C/22/3294110 (Appeal A) & APP/N4720/C/22/3294111 (Appeal B)

5 Meadowgate Croft, Lofthouse, Wakefield WF3 3SS

- 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 Stephen Davies (Appeal A) and Mrs Susan Davies (Appeal B) against an enforcement notice issued by Leeds City Council.
 - The enforcement notice is dated 2 February 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of timber fence and support posts exceeding one metre in height, located adjacent to the highway used by vehicular traffic, which exceeds the height permitted under the Town and Country Planning (General Permitted Development (England) order 2015, Schedule 2, Part 2, Class A.
 - The requirements of the notice are: Dismantle and remove all the unauthorised fence and support posts.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
-

Decisions

1. Appeal A and Appeal B are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appeals have been made solely on ground (f), which is a ground of mitigation. That being the case, it is not open to me to consider any planning merits relating to the case, for example, the comparative heights of other boundary treatments in the area. I acknowledge the appellants' stated dissatisfaction in respect of their dealings with the Council, but this cannot have a bearing on my assessment of the ground (f) appeals.

The appeals on ground (f)

3. Ground (f) is that the steps required to comply with the requirements of the notice are excessive.
4. The unauthorised development comprises a timber fence and support posts exceeding 1 metre in height that was constructed adjacent to a highway. The purpose of the enforcement notice is to remedy the breach of planning control. The question to be considered is whether there is any obvious alternative or lesser step that would achieve the purpose of the notice with less cost or disruption.

5. The enforcement notice requires the complete removal of the unauthorised development. The appellants consider this requirement to be excessive, and make two alternative suggestions, firstly that parts of the fencing could be removed and replaced with hedging. The planting of hedging does not require planning permission. Therefore, if the appellants wished to plant a hedge in place of the fence once it was removed in its entirety, there would be nothing to stop them doing so. However, the replacement of only parts of the fence with hedging would not achieve the remedy of the breach.
6. Secondly, the appellants have indicated that they would be willing to reduce the height of the fence to fall within permitted development limits. Ordinarily, a fence on a residential property adjacent to a highway would be permitted development under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), as long as no part of it exceeded 1m in height. However, Article 3(6) of the GPDO excludes permission for any development, other than under certain classes of Parts 9 and 18, which requires or involves the formation, laying out or material widening of a means of access to an existing highway which is a trunk road or classified road, or creates any obstruction to the view of persons using any highway used by vehicular traffic, so as to cause danger to them.
7. The Council have elaborated on their concerns over highway safety. They state that the erection of the fence largely restricted visibility to the left for vehicles exiting the driveway of No 5 and visibility to the right for vehicles exiting the driveway of 7 Meadowgate Croft. Vehicles leaving the driveways in a forward direction would not have a full view of the highway until the front of the vehicle had left the driveway and progressed over the footpath. Visibility would be more restricted for the drivers of vehicles reversing off the driveways. Drivers would be prevented from seeing any pedestrian or vehicle approaching along Meadowgate Croft until they were crossing the footpath, causing a hazard to traffic, and to pedestrians in particular.
8. The appellants do not dispute the Council's arguments, and offer no evidence that the provisions of Article 3(6) do not apply in this particular case. Therefore, it would not be appropriate for me to vary the enforcement notice to allow the fence to be retained at a lower height, if planning permission would still be required for such a change.
9. Taking these factors into account, I have not been able to identify any lesser steps that would achieve the aim of the notice. I therefore conclude that the requirements of the enforcement notice are commensurate with the aim, which is to remedy the breach of planning control.
10. The appeals on ground (f) therefore fail.

Conclusion

11. For the reasons above, Appeals A and B are dismissed and the enforcement notice is upheld.

Elaine Gray

INSPECTOR