



Appeal Decisions

Site visit made on 14 June 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2022

Appeal A Ref: APP/X4725/C/22/3294478

Appeal B Ref: APP/X4725/C/22/3294479

Land at 31 Leafield Drive, Wakefield WF2 0FT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
 - Appeal A is made by Mr Ryan Barton against an enforcement notice issued by Wakefield Metropolitan District Council.
 - Appeal B is made by Mrs Gemma Barton against an enforcement notice issued by Wakefield Metropolitan District Council.
 - The notice was issued on 18 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a boundary fence more than 1.0m in height adjacent to highway on the Land.
 - The requirement of the notice is to remove the fence from the land.
 - The period for compliance with the requirement is one month.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) of the Town and Country Planning Act 1990 as amended.
 - Appeal B is proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by:
 - (1) The addition of the following words in section 5 of the enforcement notice (what you are required to do) after *land*: *Or reduce the height of the fence so that no part of it exceeds one metre in height above ground level.*
2. Subject to this variation the appeals are 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.

Preliminary Matters

3. The postcode in the banner heading above is taken from the appellants' appeal form since none was given on the enforcement notice.
4. In February 2021 Mrs Gemma Barton submitted a planning application for the fence, subject of the enforcement notice. That application was refused by the Council and subsequently dismissed on appeal¹. I am aware that the Inspector also determined an appeal in respect of a fence on the opposite side of the road at 21 Leafield Drive. It is against this background which I have considered the deemed planning application.

¹ APP/X4725/D/21/3281790

Appeal A on ground (a) and the deemed planning application

5. The main issue is the effect of the fence on the character and appearance of the area.
6. The appeal property comprises a detached dwellinghouse located within a modern housing estate at the entrance to a cul-de-sac of four detached dwellinghouses. The front boundaries to the dwellings are predominantly open with some planting which gives the estate a pleasant soft-landscaped and open character.
7. Although I have no details before me of how the land previously appeared, I have had regard to the previous Inspector's conclusions that the soft and undeveloped verges to the side of 31 and 21 Leafield Drive added positively and distinctively to the spacious character and appearance of this part of the estate.
8. The fence, subject of the appeal, has been erected immediately adjacent to the road which leads into the cul-de-sac. Given its height, length, prominence, and materials used in its construction, it forms a large, obtrusive, and incongruous feature.
9. Moreover, due to its position adjacent to the highway, it appears unacceptably enclosing, which contrasts with the sense of space and openness that characterises this part of the estate. Consequently, the fence is a dominant and incongruous feature that appreciably harms the character and appearance of the area.
10. I acknowledge the appellant's comments regarding the need for the fence due to littering, including the discarding of needles and damage caused by contractors and parked cars. However, since there is no substantive evidence that the appeal development is the only way such needs could be met, this is a matter of little weight in my assessment.
11. Similarly, whilst I note the petition in support, this is a neutral matter which cannot outweigh my findings.
12. Overall, for the reasons given, I conclude that the fence fails to accord with the design aims of Policy CS10 of the Wakefield Metropolitan District Council Local Development Framework Core Strategy 2009, Policies D9 and D10 of the Wakefield Development Policies Local Development Framework 2009, the Wakefield Residential Design Guide SPD 2018, and the National Planning Policy Framework.

Appeal A and Appeal B on ground (f)

13. The appeal on ground (f) is that the requirements of the notice exceed what is necessary.
14. The appellants' case on this ground is that they would like to retain the fence but lower it to no more than one metre in height or, keep the fence posts but cut them down to the height of the gravel boards and leave the gravel boards in place to create a raised grass verge, albeit no details of the latter suggestion have been provided.
15. Although it has not been made clear, it appears to me that in respect of the suggestion to lower the height, the appellants are referring to Article 3

Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) which permits the erection of a gate, fence, wall, or other means of enclosure subject to conditions and limitations.

16. The purpose of the enforcement notice is to remedy the breach of planning control and removal of the fence is consistent with that purpose. However, the enforcement procedure is intended to be remedial rather than punitive. Consequently, it is open to me, and I am required to consider whether there is an obvious alternative which would overcome the planning difficulties at less cost and disruption than total removal.
17. As such, whilst acknowledging that permitted development rights cannot be claimed retrospectively, it is open to me to vary the requirements of the notice to offer the opportunity to modify the development in accordance with the terms of the permission granted by the GPDO, should such rights represent a realistic fallback position.
18. There is no suggestion that the property does not benefit from permitted development rights, and it seems likely to me that the appellants would seek to erect a replacement fence given their stated reasons for requiring it.
19. Consequently, requiring complete removal of the fence would be unlikely to achieve anything and is therefore excessive. An obvious alternative in this case that could be achieved with less cost and disruption, would be for the fence to be reduced in height to reflect the permitted development right for a 1m high fence.
20. Accordingly, the notice shall be varied to allow the appellants the option of reducing the fence to no more than one metre in height. To that limited extent, the ground (f) appeals succeed.

Conclusion

21. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR