



Appeal Decision

Site visit made on 9 August 2022

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 August 2022

Appeal Ref: APP/C3105/C/22/3290287

Land adjacent to 1 Coleridge Close, Bicester, Oxfordshire OX6 2XR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Derek Phillips (Threshold Investments Limited) against an enforcement notice issued by Cherwell District Council.
 - The notice, numbered 21/00215/ENF, was issued on 7 December 2021.
 - The breach of planning control as alleged in the notice is: *Without planning permission, the erection of a timber fence above 1m in height and adjacent to a highway, as identified in blue on the attached plan titled 'Location Plan'.*
 - The requirements of the notice are to: 1. *Remove the timber fence in its entirety from The Land.* 2. *Restore any exposed surface resulting from compliance with (1) to its former condition before the breach took place.* 3. *Remove all debris resulting from compliance with (1) and (2) from The Land.*
 - The period for compliance with the requirements is: *1 (one) month.*
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. The appellant's representations refer to the merits of the development. Included amongst the points raised are a comparison with similar height boundary treatments in the area, the need to protect the parcel of land from trespassers and provide security for the owner. I also noticed some of the other boundary structures as referred to by the appellant during my visit. However, because a fee has not been paid for an appeal on ground (a), I cannot consider these or any other planning merits of the development. Furthermore, whatever the reasons may be for the boundary structure, they fall outside the scope of an appeal made under ground (c) only.

The appeal on ground (c)

1. The appeal on ground (c) is that the matter alleged in the enforcement notice does not constitute a breach of planning control.
2. Article 3, Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits "The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure", subject to various limitations.

3. Limitation A.1(a) of Class A states that such development is not permitted where "the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development exceed (ii) " 1 metre above ground level". There is no dispute that the fence is over 1 metre so the question is, therefore, whether the fence is adjacent to the highway. If the fence is adjacent to the highway, then at over 1 metre it would fall outside the limitation and would not fall within Class A of Part 2 of Schedule 2 to the GPDO.
4. There is no definition of 'adjacent' within the GPDO and the assessment of what constitutes adjacent is therefore a matter of fact and degree. However, a normal everyday dictionary definition is 'being near or close'. Consequently, it is not necessary for the fence to actually touch the highway in order to be adjacent to it.
5. The appeal site is a triangular piece of land located between dwellings on Browning Drive and Coleridge Close. The fence extends along the entire boundary between the properties and runs parallel to, and at a uniform distance with Browning Drive. It is separated from the carriageway of Browning Drive by a grass verge which I am told is owned by the appellant and measures more than 1m deep. This is separated from the carriageway by a wide pavement, and this separation is consistent for the length of the fence except for where the fence has been brought in to adjoin the bungalows on each end.
6. From my visit it was apparent that the line of the fence is set further back from the carriageway when compared with the hedgerow that looks to have formed part of the previous boundary between the land and the road. Whilst the verge is said to be in the ownership of the appellant, it is the fence which visually marks the boundary with the highway. The fence is close to the edge of the carriageway and separates the land from the carriageway, thereby acting as a means of enclosure.
7. Given the nature of the development, the proximity between the fence and the pavement, which is considered as part of the highway, and no physical or visual separation except for a grass verge, which does not perform any separating or boundary function, I find the relationship with the highway to be close. As a matter of fact and degree, I consider the fence to be adjacent to the highway. The fence exceeds 1 metre in height, in breach of limitation A.1(a)(ii) to Class A of Part 2 of Schedule 2 to the GPDO and planning permission has not been granted. As such, there has been a breach of planning control and so the ground (c) appeal must fail.

S A Hanson

INSPECTOR