



Appeal Decision

Site visit made on 24 August 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 26th August 2022

Appeal Ref: APP/P3420/C/22/3294161

7 Southlands Avenue, Newcastle under Lyme, ST5 8BZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Kandola of Kingsley Rest Home against an enforcement notice issued by Newcastle-under-Lyme Borough Council.
 - The notice was issued on 17 February 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of timber board fencing within the front garden ("the Development") on the Land.
 - The requirement of the notice is :
 1. Remove the timber board fencing from the front garden area of the Land.
 - The period for compliance with the requirement is 2 months.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

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

Preliminary Matters

2. The Council refused to grant retrospective planning permission for the fencing, the subject of the notice, on the 11 November 2021.¹ The appellant has chosen not to appeal under Section 174(2)(a) of the Act which is that planning permission should be granted for the matters stated in the notice. The appeal is made under the limited ground (f) only.

The appeal under ground (f)

3. An appeal under ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of a notice are set out in Section 173 of the Act and are to remedy the breach of planning control or to remedy any injury to amenity. As the requirement is to remove the fencing, the purpose of the notice is to remedy the breach of planning control.
4. The appellant's argument under this ground is based on Drawing 3 which shows alternative fencing in a different location with a reduced length along the front to provide space for car parking. The Council has commented upon this alternative proposal and has concerns about on-site parking provision at the appeal site which is a rest home.
5. In any event, proposing alternative fencing in a different location is not an argument that the removal of the existing fencing is excessive to remedy the breach of planning control. Whether or not the appellant can subsequently

¹ 21/00857/FUL

erect alternative fencing is a separate matter for him to resolve with the Council outside of this appeal process.

6. The parties' discussions can include the implications of any proposal having regard to the conditions attached to planning permission Ref 20/00828/FUL. It is then for the appellant to decide how he wishes to proceed and whether to make a further planning application or not. However, as the purpose of the notice is to remedy the breach of planning control, a requirement to remove the existing fencing is not excessive. The appeal under ground (f) therefore fails.

Conclusion

7. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

E Griffin

INSPECTOR