



Appeal Decision

Site visit made on 7 September 2022

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 28 September 2022

Appeal Ref: APP/W3330/C/21/3278331

Land at Greenway Woods, South Drive, Also known as land at Sandhill Park, Bishops Lydeard, Somerset, TA4 3BZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the 1990 Act"). The appeal is made by Mrs Mandy Curran against an enforcement notice issued by Somerset West and Taunton Council.
 - The notice, numbered E/0062/06/20, was issued on 24 May 2021.
 - The breach of planning control as alleged in the notice is: "Installation of fences and gates on the Land in the positions shown delineated blue on the Plan".
 - The requirement of the notice is: "Remove from the land the fencing and gates referred to in paragraph 3 of this Notice".
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (e) of the 1990 Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is 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.

Preliminary matters

2. The land to which the enforcement notice relates, as shown edged in red on the plan attached to the notice, is part of the area of Greenway Wood which lies on the eastern side of South Drive. It curves around the rear garden boundaries of the outer perimeter of houses on Greenway. Within the area that is edged in red, the plan attached to the notice identifies three smaller areas in blue. These delineate the development attacked by the notice: two lie on the western side of the houses at Greenway, and one on the eastern side, to the rear of 46 Greenway. For the avoidance of doubt it is only the development to the rear of 46 Greenway, on land within the ownership and control of the Appellant, that is the subject of this appeal.

The appeal on ground (e)

3. The ground of appeal is that the notice has not been properly served on one or more party. The Appellant's concern is that the notice was pinned to a tree, rather than delivered to their property, and was not discovered until some time later, during the week that their purchase of a parcel of the land was finalised.

4. S.172(2) of the 1990 Act requires that a copy of an enforcement notice shall be served on "the owner and on the occupier of the land to which it relates". S.329(2)(b) provides that a notice that is required to be served on any person as having an interest in premises shall be taken to be duly served if it is "affixed conspicuously to some object on those premises", but this is only in circumstances where "the name of that person cannot be ascertained after reasonable inquiry".
5. In this case, the Council has confirmed that it served the notice on the registered owners shown on the Land Registry records, and pinned three further notices, addressed to "The Owner and Any Occupier" in each of the three areas identified in blue on the enforcement notice plan. The Council has also advised that in April 2020 it wrote to all the owners/occupiers of properties in Greenway which back on to the woods, explaining that constructing fences in the woods to divide off parcels of land would require planning permission. "Numerous responses" were received: some stating that they were in the process of buying the land, and others that they were not. This suggests that it would have been a fairly straightforward matter for the Council to ascertain, through the information provided and the use of Planning Contravention Notices, the names of the owners/occupiers who had bought land in the woods and erected fences on it.
6. However, be that as it may, it is also important to note that s.176(5) of the 1990 Act states: *Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.*
7. In short, whether or not the Council ought reasonably to have taken further action to identify the owner/occupier of the appeal site and delivered the notice to no.46 rather than pinning it to a tree, it is the case that the Appellant received a copy of the notice in time to lodge a valid appeal, and has submitted written representations in support of that appeal. The Appellant cannot, therefore, be regarded as having been "substantially prejudiced" in this regard.
8. It follows that the appeal on ground (e) must fail.

The appeal on ground (a)

9. The ground of appeal is that planning permission should be granted for the matters alleged by the notice. The main issue is the effect that the development would have on the setting, and thereby the significance, of Sandhill Park, a grade II* listed building.
10. Sandhill Park is a country house dating from around 1720. It occupies a slightly elevated position looking out over an extensive area of open parkland, the southern extent of which is defined by Greenway Woods. The main approach to the building is along South Drive, the start of which is marked by a lodge building at its junction with Greenway Road. From there, the drive passes through the mature trees of Greenway Woods before entering open parkland, where the principal elevation of the house comes into view. This planned approach, which progresses from the public highway through the shelter of the woods to the open parkland, is an important part of the pastoral setting that makes a substantial contribution to the significance of the house.

11. In 2013 the Council granted planning permission¹ for the conversion of the house and its outbuildings to apartments, and the construction of 28 new dwellings, subject to a number of conditions. Condition no. 21 prevented the erection of any gate, fence, wall or other enclosure (other than those expressly authorised by that permission) without a further grant of planning permission. An application for the removal or variation of this condition was refused in August 2020.² The plans approved by the 2013 permission included a Landscape Masterplan covering Greenway Woods, which addressed matters such as the re-planting of some areas, and the removal of "twentieth century accretions". The woodland now appears to have been sold off in parcels of varying size; there is no evidence of any s.106 Agreement having been attached to the 2013 Permission that would have prevented this.
12. The enforcement notice seeks the removal of various fences and gates that have been erected on these newly sub-divided plots of woodland. The Appellant's position is that the fencing which has been erected to the rear of 46 Greenway, as identified in blue on the plan attached to the enforcement notice, is temporary: its purpose was to provide a secure area within which their dogs could be exercised, pending finalisation of the sale of the land. Their intention, once the sale was completed, was to seek planning permission for a permanent fence of a more appropriate design and profile.
13. I do not consider (and, as I understand it, the Appellant does not seek to argue) that planning permission should be granted for the "temporary" fence that is the subject of the notice. While I saw at my site visit that it is not visible from the house at Sandhill Park or the approach along South Drive, its functional but fairly basic appearance is at odds with the more traditional style of fencing used elsewhere within the parkland and woods and, as a consequence, adversely affects the character of the pastoral setting of this designated heritage asset.
14. Rather than seeking permission to retain the temporary fence the Appellant's case, in this ground (a) appeal, is that permission be granted for the installation of a new and better fence. I make no criticism at all of the Appellant (who is not professionally represented) for taking this approach. However, the difficulty here is that my powers in connection with this appeal are limited to granting planning permission in respect of the matters stated in the enforcement notice, "whether in relation to the whole or any part of those matters".³ The replacement fence proposed by the Appellant cannot, in my judgment, rightly be regarded as "part of" the development attacked by the notice. It involves the erection of a new and more permanent fence, of different design and materials, which would enclose a greater area of land (some 70m by 70m).
15. Since I have concluded that planning permission should not be granted for the temporary fence, and that it is not open to me in the context of this appeal to grant planning permission for the Appellant's proposed replacement, it follows that the appeal on ground (a) must fail. However, in the interests of clarity, it is worth noting here that since the terms of s.177(a) preclude my consideration of the proposed replacement fence, it remains open to the Appellant to apply

¹ Ref 06/08/0010 dated 1 August 2013

² Ref 06/20/0032/ENQ dated 27 August 2020

³ S.177(a) of the 1990 Act

for planning permission for that proposal in the usual way.⁴ It would then be for the Council to determine the outcome of that application, on the basis of the details and extent of the fencing and gates proposed, and in the light of the up-to-date circumstances of the appeal site and its context.

Conclusion

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

Jessica Graham

INSPECTOR

⁴ Such an application would not be precluded by operation of s.70C, due to my finding that the development at issue does not constitute the whole or part of the matters specified in the enforcement notice.