



Appeal Decisions

Site visit made on 8 September 2022

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th October 2022

Appeal A Ref: APP/E2001/C/22/3298481

Land at The Laurels, 38 Humber Lane, Patrington, East Riding of Yorkshire HU12 0PJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ('the Act').
- The appeal is made by Mrs Annmarie Houlston against an enforcement notice issued by East Riding of Yorkshire Council.
- The notice was issued on 23 March 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a gate and fence in excess of 1 metre in height adjacent to the highway.
- The requirement of the notice is to remove the fence panels and posts situated along the frontage of Humber Lane and Ings Lane or reduce their height to no higher than 1 (one) metre in height.
- The period for compliance with the requirement is within 3 months of the notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the 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.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/E2001/W/22/3291348

38 Humber Lane, Patrington, Hull HU12 0PJ

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
- The appeal is made by Mrs Annmarie Houlston against the decision of East Riding of Yorkshire Council.
- The application Ref 21/00096/PLF, dated 12 April 2021, was refused by notice dated 12 November 2021.
- The development proposed is: Take down unsafe brick wall and replace with fence; take down hedges and replace with fence.

Summary of decision: The appeal is dismissed insofar as it relates to the fence and allowed insofar as it relates to the pedestrian gate in the terms set out in the Formal Decision.

Preliminary Matters

1. Notwithstanding the different addresses, the appeals relate to the same land.
2. The description of development in Appeal B above is taken from the application form. The Council gave the different description "Erection of a boundary fence and pedestrian gate following removal of existing brick wall and hedges" in its decision notice. Noting that the pedestrian gate is adjacent to a highway used by vehicular traffic and exceeds 1 metre in height, I find the Council's description to be more accurate and I shall determine the appeal on that basis.

Appeal A – the appeal on ground (a) and Appeal B

3. The main issue in these appeals is the effect of the fence and pedestrian gate on the character and appearance of the area.

Reasons

4. 38 Humber Lane is a corner plot with a substantial garden almost entirely in front of the dwelling. The fence runs along most of the Humber Lane frontage, with a low pedestrian gate at the northernmost end. The fence also occupies most of the Ings Lane frontage, with cast iron driveway gates and a short section of hedge beyond.
5. Owing to its height, length and corner position, the fence is a prominent feature, particularly when approaching from the south on Humber Lane. The absence of soft landscaping increases its prominence, such that it forms a stark feature in the street scene. This is at odds with most residential frontages in the area, which are either open or enclosed with low walls and fences or hedges.
6. Exceptions include 19 Humber Lane, which has a tall brick wall, and 19a Humber Lane, which has a tall brick wall with sections of railings, and metal gates. While these features are of comparable height to the fence the subject of the appeals, they are set back behind a grass strip, which reduces their prominence in views along the road. An adjacent, similar height, brick and render wall at 17 Humber Lane narrows the strip as it runs north and, being painted white, is more prominent within the road frontage. Nevertheless, and viewed in context, it is significantly less prominent than the appeal proposal.
7. Further along Humber Lane, the back garden of 25 Westgate is enclosed by a tall wooden fence. However, this relatively new fence does not appear to be authorised, so it cannot form a strong precedent for the appeal fence.
8. 39 Ings Lane, adjacent to the appeal site, has a section of fence and driveway gates adjacent to the footway, although a section of hedge has been retained adjacent to the appeal site. The fence is comparable with the appeal proposal in terms of its height, solid form and length. Nevertheless, its effect on the character of the area is limited because it does not occupy a corner position.
9. The appearance of the appeal fence could be softened by painting in a muted colour; however, this would not alter its scale and form, and thus would not fully overcome the harm it causes to the character and appearance of the area. There is a narrow strip between the footway and the fence along Ings Lane and planting in that strip would soften the appearance of the fence. However, no planting details have been provided, so it is not clear whether any species would attain sufficient height to mitigate the effect of the fence without also growing out over the highway and impeding its use. While both measures would achieve an improved appearance, they would not, either individually or in combination, overcome the harm arising from the scale and form of the fence in its prominent location.
10. The pedestrian gate is clearly separable from the fence and its design and height are compatible with the character of the area. Furthermore, the notice does not require it to be removed or lowered. Accordingly, I find this gate to be an acceptable form of development. However, the scale, height and materials

of the fence are not appropriate to the character of the local area and it has not been shown that their adverse impact can be adequately mitigated.

Other Matters

11. Following the removal of the previous boundary treatment comprising walls and hedges, the fence provides privacy that is important to the appellant's living conditions. However, it is not the only way in which a reasonable degree of privacy could be achieved in the short or longer term. A raised bed planted with laurel stands behind the fence and, once the planting has matured, this could provide comparable privacy in a less stark form. Accordingly, and while I recognise the appellant's reasonable expectation of privacy, it does not alter or outweigh my finding on the main issue.

Conclusions on ground (a) and Appeal B

12. The fence does not contribute to safeguarding and respecting the diverse character and appearance of the area or have regard to the specific characteristics of the wider context and the character of the surrounding area. Its scale, massing and height do not enhance the setting of buildings, public space, and views. While these matters could be addressed to some extent by painting the fence and by limited landscaping, it has not been shown that this would sufficiently mitigate the identified harm. The fence is therefore contrary to policy ENV1 of the East Riding Local Plan 2012-2029 Strategy Document and part 12 of the National Planning Policy Framework.
13. In contrast, the pedestrian gate is compatible with the character and appearance of the area and is therefore an acceptable form of development. Section 79(1)(b) of the Act confirms that one part of a scheme may be allowed, and the rest dismissed, when determining an appeal against refusal of planning permission. I shall therefore grant planning permission in respect of the pedestrian gate.
14. For these reasons, the appeal on ground (a) should not succeed and Appeal B should succeed in respect of the pedestrian gate only.

Appeal A – the appeal on ground (f)

15. An appeal may succeed on this ground if the steps required to comply with the notice are excessive. Section 173(4) of the Act states that the purposes of a notice are to either (a) remedy the breach of planning control; or (b) remedy any injury to amenity it has caused. It must therefore be demonstrated that lesser steps could overcome the breach or, as the case may be, remedy any injury to amenity caused by it.
16. The appellant contends that any injury to amenity would be remedied by the lesser step of reducing the height of the fence on the Ings Lane frontage to 1 metre. However, this would not overcome the breach of planning control because a fence over 1 metre in height and adjacent to the highway would remain along the Humber Lane frontage.
17. While the notice is not explicit whether its purpose is to remedy the breach of planning control or any injury to amenity, the Council states the requirements are necessary to remedy the breach. However, keeping the fence on the Humber Lane frontage at its current height would perpetuate, albeit to a lesser degree, the injury to amenity described in the reasons for issuing the notice.

18. This lesser step would alter the balance between the harm to the character and appearance of the area and the appellant's wish for privacy considered in the appeal on ground (a). However, even though the harm would be reduced, it would still be significant considering the length and prominence of the fence that would be retained on Humber Lane frontage. I am therefore not persuaded that injury to amenity would be remedied. In any event, and as noted above, reasonable privacy could be achieved through less harmful options.
19. The other suggested lesser step, of painting the fence, has been considered in the appeal on ground (a). While a painted fence might appear more discrete in some views, its scale and height would still be perceived, and it would remain uncharacteristic of the surrounding area. Furthermore, a fence in excess of 1 metre in height would remain. Accordingly, this would neither overcome the breach of planning control, nor remedy the injury to amenity it causes.
20. For these reasons the appeal on ground (f) must fail.

Appeal A – Conclusion

21. For the reasons given above, I conclude that the appeals on grounds (a) and (f) 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 Act.

Appeal A – Formal Decision

22. The notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal B – Formal Decision

23. The appeal is dismissed insofar as it relates to the fence. The appeal is allowed insofar as it relates to the pedestrian gate and planning permission is granted for a pedestrian gate at 38 Humber Lane, Hull, HU12 0PJ in accordance with the terms of the application, Ref 21/00096/PLF, dated 12 April 2021, and the plans submitted with it, so far as relevant to that part of the development hereby permitted.

Mark Harbottle

INSPECTOR