
Appeal Decision

Site visit made on 8 November 2022

by Ms Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2023

Appeal Ref: APP/V0510/C/21/3277055

Land known as Land adjacent to 2B Moor Road, Fordham, Cambridgeshire, CB7 5LX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by ALN Carpentry & Joinery Ltd against an enforcement notice issued by East Cambridgeshire District Council.
- The enforcement notice, numbered OP/19/00280EN1, was issued on 11 May 2021.
- The breach of planning control as alleged in the notice is "without planning permission, the erection on the land of a fence which exceeds 1 metre in height, adjacent to a highway used by vehicular traffic" and "without planning permission, the erection on the land of gates across the access, in breach of condition 9 of the decision notice for 19/00887/FUL".
- The requirements of the notice are to: (i) remove the gates and (ii) reduce the height of the fence to 1m.
- The periods for compliance with the requirements are: (i) one month and (ii) three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. 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 with corrections in the terms set out below in the formal Decision.

Preliminary Matters

1. A defect in the notice is that the Council has not specified whether the alleged breaches fall under S.171A(1)(a), i.e., carrying out development without the required planning permission, or S.171A(1)(b), i.e., failing to comply with any condition or limitation subject to which planning permission has been granted. Section 173(1)(b) requires the enforcement notice to state the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls.
2. This omission is particularly relevant to the second part of the allegation set out in Section 3 of the notice which is that there has been "without planning permission, the erection on the land of gates across the access, in breach of condition 9 of the decision notice for 19/00887/FUL." However, I am not persuaded that there has been a breach of condition in this instance. Condition 9 required the construction of the access to the site in accordance with Plan 19:002 – 9 Rev D and thereafter retained in perpetuity.
3. The access itself, i.e., the tarmacked area, has been constructed and there is no suggestion that the tarmacked area has not been constructed in accordance with the permission. Whilst the plan does not show any gates, there is nothing before me to indicate that the addition of gates to the approved access would

be prohibited. Consequently, I am not satisfied that the gates are a breach of Condition 9 as alleged in the notice.

4. Furthermore, the notice fails to set out the Council's reasons for taking enforcement action against the gates. The reasons only set out why the Council considers the fence to be unacceptable but no such explanation is given for the gates. Indeed, even if there had been a breach of Condition 9, saying that on its own would not show why the Council considered it expedient to take action.
5. Under s176(1)(a), I may correct any error in an Enforcement Notice so long as doing so would cause no injustice to the appellant or the Council.
6. For these reasons, I shall correct the notice to omit all references to the gates and to refer to the correct sections of the Act. Doing so will cause no injustice to the Council because they will not be prevented from issuing another notice in respect of the gates at a later date, should they consider that the gates are a breach of planning control, notwithstanding my finding that there is no breach of condition. For the same reason, the correction will not prejudice the interests of the interested parties to this appeal, although I will not now be able to consider their representations against the gates.

The appeal on ground (a)

7. The main issue is the effect of the fence on the character and appearance of the area.

Reasons

8. The fence is on the frontage of Moor Road and adjoins a grassed area between the houses and the road.
9. The appeal site is at the end of a short ribbon of development within an otherwise rural area. There is open countryside adjoining the appeal site beyond this ribbon of development and also opposite the site. Notwithstanding the nearby residential development, the general appearance of the site's surroundings is of a predominantly rural character.
10. The closed boarded fence is around 2m in height and appears as a continuation of the fence at 2C Moor Road. It forms a hard edge to the development which blocks views of the grassed area and housing behind it. It therefore has an urbanising effect upon the landscape.
11. Whilst I note that there is planting in front of the fence which helps to screen it, this does not overcome its solid and enclosing nature. Furthermore, whilst I appreciate that the vegetation would grow and provide denser screening, this does not overcome the impermeable nature of the boundary treatment. In addition, some screening would be lost in the winter when leaves fall. The fence is obtrusive within the street scene and visually incongruous with its rural location.
12. I appreciate that the Council approved the fence at 2C Moor Road but this does not provide justification for the harm I have found.
13. I conclude that the fence harms the character and appearance of the area. Therefore, it conflicts with Policies ENV1 and ENV2 of the East Cambridgeshire Local Plan which in combination, seek to protect the character and appearance

of the area. They also conflict with Policy 2 of the Fordham Neighbourhood Plan which seeks to ensure that development delivers high quality design.

14. Therefore, I conclude that permission should not be granted for the fence and the appeal on ground (a) should fail.

The appeal on ground (f)

15. For the appeal to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity. In this case, the notice requires the unauthorised development to be removed in its entirety. That is consistent with remedying the breach of planning control, in accordance with s173(4)(a) of the Act. Accordingly, I do not regard it as an excessive requirement.
16. The appellant referred to temporary fencing across the site entrance and suggested that there was no point in enforcing against this as it would be removed when the development is completed. There was no temporary fencing across the entrance when I visited the site, however, although this has been removed, the rest of the fencing referred to in the notice remains. It is important that the requirements of the notice relating to the fence remain to ensure that this breach of planning control is addressed, irrespective of whether temporary fencing has already been removed. In any event, since the development has now been completed, the change suggested by the appellant would not have any practical effect.
17. I conclude that the requirements of the notice relating to the fence do not exceed what is necessary to remedy the breach of planning control and should remain unchanged. As I have already indicated, I will remove the requirements relating to the gates. To that extent only, the appeal on ground (f) succeeds.

Conclusion

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

Formal Decision

19. It is directed that the enforcement notice is corrected by (a) The replacement of "171A(1)" with "171A(1)(a)" in Section 1; (b) the removal of the allegation "Without planning permission, the erection on the land of gates across the access in breach of condition 9 of the decision notice for 19/00887/FUL" under Section 3; (c) the removal of Step (i) in Section 5 and (d) removal of Step (i) in Section 6. Subject to these corrections the appeal is dismissed and 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.

Ms Watson

INSPECTOR