
Appeal Decision

Site visit made on 9 February 2023

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 01 March 2023

Appeal Ref: APP/X2410/C/21/3287278

The Hunt Kennels, 7 Huntsmans Close, Quorn, Leicestershire LE12 8AR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Miss Christina Church against an enforcement notice issued by Charnwood Borough Council.
 - The enforcement notice is dated 19 October 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of approx. 2m high fencing attached to the original fencing on the boundary of the land with Huntsmans Close in the position more particularly shown by thick red line on the plan attached to the notice.
 - The requirements of the notice are: Remove the fencing referred to in paragraph 3 of the enforcement notice.
 - The period for compliance with the requirements is four weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matters

2. The appeal is proceeding on grounds (b) and (c), which are legal grounds. As there is no ground (a), which is that planning permission should be granted for the alleged development, the planning merits of the case cannot be considered. For example, I cannot take into account whether or not other fences in the vicinity have planning permission, as this would go to the merits of the case. On the grounds (b) and (c), the onus is on the appellant to make out her case to the standard of the balance of probabilities.

Ground (b)

3. Ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
4. The appellant argues that a member of the Council's planning enforcement team approved the fence a number of years ago. However, this argument goes to ground (c), which is whether or not a breach of planning control has occurred.
5. Moreover, there appears to be no dispute between the main parties that the development attacked by the notice has occurred. On the basis of the appellant's own evidence that the fence has been in place for a number of

years, I am satisfied that the matters alleged in the enforcement notice have occurred as a matter of fact.

6. The appeal on ground (b) therefore fails.

Ground (c)

7. Ground (c) is that there has not been a breach of planning control, for example because permission has already been granted, or it is 'permitted development'.
8. The appellant explains that the fence that is the subject of the notice follows an existing fence line which had been put in place by the Council in 1983. She states that the fence uses existing fence posts and is within the permitted height. The Council agree that the new fence would not be the subject of action if it fell within the requirements of Schedule 2, Part 2, Class A of the General Permitted Development (England) Order 2015 (as amended) (GPDO), which relates to minor operations comprising the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.
9. However, they argue that it needs planning permission because it falls within the curtilage of Quorn Hall, a grade II listed building which was added to the list on 9 July 1951. With specific reference to the curtilage of listed buildings, Part 2, Class A of the GPDO, under paragraph A.1(d), provides that development is not permitted by Class A if it would involve 'development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building'.
10. In order to succeed on ground (c), the appellant therefore needs to produce evidence to show that the fence is not located within the curtilage of a listed building, and that it falls within permitted development rights as a result.
11. The law provides that buildings and other structures that pre-date July 1948 and sit within the curtilage of a listed building are to be treated as part of the listed building. It is therefore important to establish the extent of the curtilage of the listed building in question when deciding whether or not planning permission or listed building consent is needed for works or development.
12. The courts have held that there are three key factors to be taken into account in assessing whether a structure or object is within the curtilage of a listed building. These are: the physical layout of the listed building and the structure; their ownership, both historically and at the date of listing; and the use or function of the relevant buildings, again both historically and at the date of listing.
13. Within the enforcement report, the Council expand on the reasons why The Kennels is to be treated as a curtilage structure. Firstly, they confirm that it is a 19th century building, and so it pre-dates July 1948.
14. They go on to say that a study of historic maps establishes that the section of the site where the unauthorised fencing is located formed part of the extensive parkland to Quorn Hall. From the presence of a number of what appear to be glasshouses, the area was possibly part of a kitchen garden to the Hall. Furthermore, The Kennels was part of a group of buildings originally associated with the Hall. This evidence establishes a close physical and functional relationship between the appeal site and the principle listed building.

15. Quorn Hall was listed in 1951. The Council state that, in the late 20th century, the southern section of the estate was sold and developed as private housing. This evidence would point to the land at The Kennels having been in the same ownership as Quorn Hall at the date of its listing.
16. Taking these factors into account, I am satisfied that The Kennels meets all the curtilage tests, and so is to be treated as part of the listed entity at Quorn Hall.
17. In support of her case, the appellant produces an email from the Council's enforcement officer dated 11 July 2017, the subject of which refers to 'planning application P/17/1203/2'. The text of the email refers to a listed building consent application that was submitted for works already undertaken to the interior of The Kennels. The email suggests that the application be withdrawn on the grounds that The Kennels is not listed.
18. There is no dispute that The Kennels is not a listed building in its own right. However, the email is clear that it is in the 'grounds' of a principle listed building. This email points to some confusion on the part of the Council, at that time, as to whether or not The Kennels was a curtilage listed building, as being 'within the grounds' would strongly point to such a relationship. Ultimately, this email is somewhat vague and contradictory in relation to the Council's other evidence, and so cannot be determinative in establishing the status of The Kennels.
19. I have taken into account the decision notices refusing planning permission, ref: P/20/0207/2, and listed building consent, ref: P/20/0883/2, for a new wall and gates at The Kennels. Although the full details of these cases are not before me, I note that reference is made to the curtilage structure to which the new development would be attached.
20. It is therefore apparent from this evidence that the Council determined that the property at The Kennels falls within the curtilage of Quorn Hall after the 2017 email. There is no evidence that the appellant disagreed with the Council on that point at the time of the applications referred to above.
21. Moreover, the appellant adduces no other evidence within the scope of this appeal to dispute the Council's position, or to show that the appeal site is not within the curtilage of Quorn Hall. That being the case, I am satisfied that the new fence does not fall within permitted development rights. On that basis, I find that planning permission is required for the unauthorised development.
22. The appeal on ground (c) therefore fails.

Other Matters

23. I note the appellant's statement that, on the day the fence was erected, an enforcement officer attended the site, took measurements, and agreed that the fence was compliant. She says that it was only after a number of complaints that the issue was brought to the attention of the Council, after which the planning department took the view that the fence required planning permission.
24. Whilst I have taken account of these statements, it is important to reiterate that grounds (b) and (c) are legal grounds which turn on the facts of the case and on legal interpretation. These factors have therefore not led me to a different conclusion on the matters above.

Conclusion

25. For the reasons above, the appeal on grounds (b) and (c) fails and the enforcement notice is upheld.

Elaine Gray

INSPECTOR