



Appeal Decisions

Site visit made on 28 February 2023

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 March 2023

Appeal Refs: APP/Z4718/C/22/3308081 & APP/Z4718/C/22/3308082
Land and property at: 67 Syke Lane, Earlsheaton, Dewsbury WF12 8EU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeals are made by Mr Christopher Teale (APP/Z4718/C/22/3308081) and Miss Rebecca Gledhill (APP/Z4718/C/22/3308082) against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 23 September 2022.
 - The breach of planning control as alleged in the notice is Without the benefit of planning permission, the erection of a fence, exceeding 1 metre in height, adjacent to the highway.
 - The requirements of the notice are:
 - a) Permanently dismantle and remove the fence from the site; or
 - b) Reduce the height of the fence to no more than 1 metre in height, measured from natural ground level.
 - The period for compliance with the requirements is 30 days.
 - Appeal Ref APP/Z4718/C/22/3308081 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.
 - Appeal Ref APP/Z4718/C/22/3308082 is proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. The appeals are 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 as amended.

Ground (a)

2. The appeal property is a house within a mature residential area. The fence targeted by the notice is about 2m in height. It is formed from horizontal pieces of wood, with a pale, natural wood finish and appears competently constructed. Number 67 has a lengthy and prominent frontage due to its corner location. The fence occupies the full length of the frontage, save for the gap where metal gates provide access to the property.
3. There are examples of high fencing and wooden gates at the front of other houses in the general area. However, it more typically features hedges and/or low walls and railings to front boundaries. The properties closest to No 67 are typical in that respect, featuring hedges, as did the appeal property itself before the fence was built. Seen in this context, the fence appears incongruous

and intrusive due to its height and solid built form. Moreover, it is highly prominent due to its corner location. As a consequence, it strikes a jarring note within the street scene.

4. For these reasons I conclude that the fence harms the character and appearance of the area. Consequently, there is conflict with the design aims of Policy LP24 of the Kirklees Local Plan. This leads me to conclude that there is conflict with the development plan as a whole. There is also conflict with the National Planning Policy Framework (the Framework), which also promotes good design.
5. The appellant advises that the fence is needed for security reasons, referring to various concerns including theft, harassment, drug dealing in the locality and the safety of children at the property. However, a photograph provided by the Council shows that the fence replaced a high hedge which was previously in place and which, in my judgement, would have provided security of a similar standard to the fence. Moreover, I have no information to show whether other, less intrusive, measures have been taken to improve security. Consequently, I attach only limited weight to the security concerns.
6. I conclude that the development causes significant harm to the character and appearance of the area and is in conflict with the development plan. The matters raised by the appellant in favour of the development do not outweigh the harm I have found. I have considered the suggestions made to improve the appearance of the fence but, for the reasons outlined in relation to ground (f), am not persuaded that they would address my concerns. Accordingly, the appeal on ground (a) fails.

Ground (f)

7. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. Since this notice leaves open the prospect of the fence being retained in a reduced form, the breach of planning control might not be remedied in its entirety. Accordingly, the purpose of the notice must be to remedy any injury to amenity. The question raised under ground (f) is whether that could be achieved by lesser steps than those specified in the notice.
8. The appellants suggest that the requirements could be varied to allow the fence to be reduced to 1.8m in height rather than 1.0m. However, the effect of this would be very marginal. While I do not know the precise height of the fence, it appears to be about 2.0m, and a reduction to 1.8m would make little difference to its appearance. A 1.8m fence would still appear too high and out of place. Consequently, the purpose of the notice would be fundamentally undermined by such a change, rendering it largely ineffective. While the appellant considers that the fence would be unappealing if reduced to 1m in height, the notice gives the option of removing it in its entirety instead. It would also be open to the appellants to introduce new planting to replace or supplement the fence. I have had regard to the appellants' security concerns but, for the reasons already given, attach only limited weight to them.
9. The appellant suggests painting the fence to help it blend into the area. However, irrespective of its colour, the fence would appear out of place due to

its height and solidity, even if it were reduced to 1.8m in height as well. Accordingly, painting it would not address my concerns.

10. For these reasons, the appeals on ground (f) fail.

Conclusion

11. For the reasons given above, I conclude that the appeals 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 as amended.

Peter Willows

INSPECTOR