



Appeal Decision

Site visit made on 27 March 2023

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 06 April 2023

Appeal Ref: APP/A0665/C/22/3307586

2 Greenfield Gardens, Elton, Chester, Cheshire CH2 4NZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr B Price against an enforcement notice issued by Cheshire West & Chester Council.
 - The enforcement notice was issued on 22 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission, rendering of the dwelling and erection of closed board wooden fence over 1 metre in height and adjacent to a highway.
 - The requirements of the notice are:
 - Option 1
 - 1. Remove the rendering from the property and restore the elevations of the dwelling to its previous condition.
 - 2. Remove the closed boarded wooden fence in its entirety.
 - 3. Remove all resulting materials from the land as outlined in red on the attached enforcement plan.
 - Option 2
 - 1. Remove the rendering from the property and restore the elevations of the dwelling to its previous condition.
 - 2. Reduce the height of the closed boarded wooden fence to 1 metre in height.
 - 3. Remove all resulting materials from the land as outlined in red on the attached enforcement plan.
 - Option 3
 - 1. Remove the rendering from the property and restore the elevations of the dwelling to its previous condition.
 - 2. Reduce the height of the closed boarded wooden fence where it is positioned forward of the principal elevation, as indicated on the attached enforcement plan, to 1 metre in height.
 - 3. Remove all resulting materials from the land as outlined in red on the attached enforcement plan.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the 1990 Act as amended.
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Decision

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

Preliminary Matters

2. The Courts have held that the relevant test of the evidence on matters such as 'legal' grounds of appeal is the balance of probabilities, with the onus of proof being on the appellant. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

3. For the avoidance of doubt, the planning merits of the proposal are not relevant as there is no ground (a) appeal and associated deemed planning application. Consequently, I am unable to take matters such as highway safety into account.

Reasons

4. The ground (c) appeal is that the matters alleged do not constitute a breach of planning control. The appellant indicates that the matters alleged either do not comprise development for which planning permission is required, or that the works would be 'permitted' development by virtue of Article 3(1) and Schedule 2, Parts 1 and 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
5. Section 55(1) to the 1990 Act says that the word 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 57(1) of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Development that has taken place without planning permission constitutes a breach of planning control.
6. Section 55(2)(a) excludes from the definition of development works for the maintenance, improvement, or other alteration of any building which (ii) do not materially affect the external appearance of the building. The Courts have held that, for works to 'materially affect' the external appearance, the changes must be visible from a number of vantage points and be material to the appearance of the building as a whole. In addition, materially affecting the external appearance means an impact capable of having some effect in planning terms.
7. The appeal property is a detached house, which is prominently located on a corner plot. The white render has a very different appearance from the brick which previously existed in terms of colour and texture. The house is highly visible from several points along Greenfield Gardens and Hallfield Drive and the render stands out in the street scene. The effect of the render on the character and appearance of the area is a valid planning consideration and the altered appearance of the house has planning consequences. As such, the render materially affects the external appearance of the building as a whole, as a matter of fact and degree. Therefore, the works would not have benefitted from the exemption under s55(2)(a).
8. I have considered whether the render would be permitted development under Part 1, Class A of the GPDO, which concerns the enlargement, improvement or other alteration of a dwellinghouse. However, this class is subject to a condition in A.3.(a) that provides the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The render is not of a similar appearance and so the condition has not been met. Therefore, the works would not be permitted development and express planning permission would be required.
9. The fence extends to around 1.8 metres in height, and it has been erected around the front and side gardens along the boundary with the pavement. The works comprise a building operation for the purposes of Section 55(1) of the 1990 Act and so would amount to development.

10. Part 2, Class A of the GPDO permits the erection of a gate, fence, wall or other means of enclosure, subject to conditions and limitations. Under A.1.(a)(ii) development is not permitted by Class A if the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1 metre above ground level. In this case, the fence exceeds the limitation in A.1.(a)(ii) and it would not benefit from permitted development rights.

Conclusion

11. I find that the matters alleged are development for which express planning permission would be required. In the absence of any such permission, deemed or otherwise, the matters alleged constitute a breach of planning control and the appeal on ground (c) fails.
12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Debbie Moore

Inspector