



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 June 2023

Appeal Ref: APP/M1595/C/22/3300913

38 Sanderling Close, East Tilbury, Essex RM18 8FF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Remigiusz Lisinski against an enforcement notice issued by Thurrock Borough Council.
 - The notice was issued on 31 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission the erection of black metal railings with a maximum height of 1.4m to the front of the property.
 - The requirements of the notice are to:
 - 1)(a) Remove the railings from the Land;
 - (b) Remove any foundations of the railings from the Land;
 - (c) Remove all materials arising from steps (a) and (b) above from the Land.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) 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 Matter

2. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site given the grounds of appeal and points in dispute.

The appeal on ground (f)

3. The appeal on ground (f) is that the requirements of the notice exceed what is necessary.
4. The appellant's case is that they would like to retain the railings but lower them to no more than one metre in height, in accordance with that which would typically be permitted by virtue of Article 3 Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) which permits the erection of a gate, fence, wall, or other means of enclosure subject to conditions and limitations.
5. The purpose of the enforcement notice is to remedy the breach of planning control and removal of the railings is consistent with that purpose. However, the enforcement procedure is intended to be remedial rather than punitive. Consequently, it is open to me, and I am required to consider whether there is an obvious alternative which would overcome the planning difficulties at less cost and disruption than total removal.

6. As such, whilst acknowledging that permitted development rights cannot be claimed retrospectively, it would have been open to me to vary the requirements of the notice to offer the opportunity to modify the development in accordance with the terms of the permission granted by the GPDO, should such rights represent a realistic fallback position.
7. However, in this case, those permitted development rights granted by Part 2 Class A of the GPDO have been removed by condition¹ and there is no fallback position. It would not therefore be appropriate to vary the requirements as suggested.
8. The appellant referred to other boundary treatments and argued that lowering the height of the railings would reduce their overall prominence such that they would appear as an elegant and lightweight feature along the frontage. These are matters which relate to planning merits.
9. However, where there is no appeal under ground (a) there is no deemed application for planning permission, as such there can be no arguments or consideration of the planning merits of the development under ground (f).
10. Similarly, whilst I acknowledge the letter of support, the appellant's comments regarding Persimmon and that the railings have solved a littering problem, these matters have no bearing on this ground of appeal. The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose.
11. Since the purpose of the notice is to remedy the breach of planning control which has occurred, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeal on ground (f) fails.

The appeal on ground (g)

12. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that they will have to appoint a contractor to carry out the works and given the current climate and shortage of contractors, four months would be a reasonable period.
13. The purpose of the period within an enforcement notice is to allow for the physical works associated with the notice to be removed. The appellant's submission relates to the time before the works can commence - when a contractor can be appointed.
14. In the absence of substantive explanation regarding the availability of contractors and given the relatively straightforward nature of the railings construction, I consider the period of two months for their removal, as specified in the notice, is proportionate to the breach of planning control that has occurred.
15. Accordingly, the appeal on ground (g) fails.

¹ Planning permission reference 14/00646/REM

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Felicity Thompson

INSPECTOR