



Appeal Decisions

Site visit made on 20 June 2023

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2023

Appeal A Ref: APP/D3830/C/22/3308491

Appeal B Ref: APP/D3830/C/22/3308492

5 Frankton Avenue, Haywards Heath RH16 3QX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr. Brad von der Linden and Appeal B is made by Mrs Victoria Amanda von der Linden against an enforcement notice issued by Mid Sussex District Council.
- The enforcement notice was issued on 13 September 2022.
- The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref U/183/76 granted on 3 August 1976.
- The development to which the permission relates is: Erection of 24 houses and garages
- The condition in question is no. 11 which states that:
No buildings as defined in Section 290 of the Town and Country Planning Act 1971, gates, fences, walls and other means of enclosure shall be erected between the front, main or side wall of any dwelling and any road which the curtilage of the dwelling abuts without the prior approval of the Local Planning Authority.
Reason: In the interests of visual amenities and to secure the creation of a satisfactory environment.
- The notice alleges that the condition has not been complied with in that: It appears to the Council that Condition 11 of the Planning Permission has not been complied with because a fence exceeding 1 metre in height has been erected on the Land adjacent to a highway in the location marked A-B on the Plan without the necessary planning permission.
- The requirements of the notice are to:
 - 1) Remove from the land the fence and fence posts as marked A-B on the plan.
 - 2) Remove from the land to an appropriate place of disposal all equipment, materials, paraphernalia, waste and debris arising from compliance with requirement 1) above.
- The period for compliance with the requirement is 28 days.
- The appeals are proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the notice is corrected by:
 - By deleting from requirement 2) the words 'to an appropriate place of disposal'
2. Subject to the correction, the appeals are dismissed and the enforcement notice is upheld.

Matters concerning the notice

3. I have a duty to ensure that the notice is in order. It is excessive to require that all equipment, materials, paraphernalia, waste and debris arising from compliance with requirement 1) are removed to an appropriate place of

disposal, as it is sufficient to require that they are removed from the land in order to remedy the breach of planning control. Wide powers to correct a notice are available to me under section 176(1) of the 1990 Act as amended. I am satisfied that it will not cause injustice to the appellant or the Council if I correct the notice accordingly.

The appeals on ground (f)

4. The ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The notice, as corrected, seeks to remedy the breach of planning control. Lesser steps would not achieve the purpose of the notice.
5. The appellants have put forward a number of reasons why they wish to keep the fence, based on safety, security and privacy. They have suggested that they could keep the section of fencing alongside Woodridge Close, with the rest of the front garden being left open. A drawing indicating the suggested alteration has been provided. I also note a letter of support has been provided referring to highway safety and the appearance of the fence. However, the appellants have not appealed on ground (a), and therefore there is no deemed planning application to be determined. I cannot therefore consider the planning merits of the existing fence or the reduced length of fencing suggested by the appellants. There is no obvious alternative to removing the fence in its entirety. The appeals on ground (f) therefore fail.

Conclusion

6. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction.

N Thomas

INSPECTOR