



Appeal Decisions

Site visit made on 5 July 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th July 2023

Appeal A Ref: APP/M2325/C/22/3313540

Appeal B Ref: APP/M2325/C/22/3313824

Land at Bryning Fern Nurseries, Bryning Fern Lane, Kirkham, Preston PR4 2BQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Paul McNeil and Anna Elizabeth Bond on behalf of Oliver Proniewicz against an enforcement notice issued by Fylde Borough Council.
 - The notice was issued on 22 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a means of enclosure comprising of a white metal railing fence measuring more than 1m in height adjacent to the highway enclosing the front garden along the eastern and southern boundaries of the land (means of enclosure).
 - The requirements of the notice are to either:
 - (i) remove the means of enclosure in its entirety, or
 - (ii) reduce the height of the entire means of enclosure to no more than one metre in height above ground level.
 - The period for compliance with the requirements is three months from the date this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Formal Decisions

1. The appeals are dismissed, and the enforcement notice is upheld.

Preliminary Matter

2. Section 174(1) of the 1990 Act (as amended) states that a person shall have an interest in the land, or should be a relevant occupier, before he or she can appeal against an enforcement notice directed against that land. Interest means a legal, or equitable interest such as ownership, or the grant of a tenancy or lease, or the securing on the land of a mortgage or other loan. The owner/occupier of the property is Oliver Proniewicz and for reasons explained, Messrs Paul McNeil and Anna Elizabeth Bond are acting on his behalf. The appeal has therefore proceeded on that basis.

Reasons

3. I am mindful that the occupier is disabled, and their protected characteristics for the purposes of the Public Sector Equality Duty (PSED) under the Equality Act 2010, and Article 8 of the Human Rights Act 1998 (HRA), which requires that decisions ensure respect for private and family life and the home. However, these are qualified rights and interference may be justified in the public interest. The concept of proportionality is key.
4. Building works have been carried out to the property following a grant of planning permission in March 2020. The works to the dwelling are now

complete, and it is now re-occupied. Works, however, is said to be ongoing to the detached garage, and it has taken longer than expected for reasons set out by the appellant. After the works to the garage are complete, the appellant intends to install new gates and posts along with the landscaping and new boundary treatment approved by the Council in March 2020. The driveway will then be resurfaced.

5. Heras fencing was in place around the edge of the site whilst work was being carried out to the dwelling. However, according to the appellant, after this fence was removed upon re-occupation of the dwelling, patrons leaving The Willows Social Club have occasionally encroached onto the appeal site and into areas where works are taking place. The metal railing fence was erected by the appellant to protect the public from uncompleted building works at the property as a temporary solution until they completed the remaining works by the end of this year.
6. A gravelled area is to the front and side of the dwelling. This provides access to and from the property and enables several vehicles to park off the road. There is no health and safety issue linked to the gravelled area that supports the twelve month time period sought by the appellant to carry out either of the notice's requirements. Moreover, whilst the area of partly vegetated uneven ground to the left hand side of the front door may pose a risk if persons were to stray onto the appeal site, the notice allows for the retention of the metal railing fence at a reduced height, not just its removal. The choice would be the appellant's to make. But, reducing the height of the fence could be achieved independent of the implementation of any remaining works granted planning permission, and there is no substantive evidence to suggest that reducing the height of the metal railing fence could not be achieved within three months.
7. There are no implications arising from the notice's requirements or the time period that affect the protected characteristics of the occupiers or their ability to access and enjoy their home safely. Hence, the compliance period stated in the notice to be proportionate and reasonable in this case. It is also in the public interest to provide the appellant with a focus to remedy the breach of planning control in a timely manner. As such, I conclude that the appeal on ground (g) fails.

Conclusion

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

Andrew McGlone

INSPECTOR