



Appeal Decision

Site visit made on 5 July 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th July 2023

Appeal Ref: APP/B2355/C/22/3312506

Land at 15 St Peters Avenue, Haslingden, Rossendale, Lancashire BB4 4BS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jason Holden against an enforcement notice issued by Rossendale Borough Council.
 - The notice was issued on 16 November 2022.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, operational development comprising of the erection of a concrete post and panels fence adjacent to the public footpath and highway exceeding 1 meter in height.
 - The requirements of the notice are to: the fencing is either completely removed where it stands within two metres of the property boundary with Colldale Terrace or reduced to one metre in height within that area measured from the level of the ground on which it currently stands.
 - The period for compliance with the requirement is: 1 month from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) 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.
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Formal Decision

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

Preliminary Matter

2. Within the reasons set out by the Council for issuing the notice, reference is made to Policies 1, 16, 23 and 24 of the Council's adopted Core Strategy Development Plan Document (DPD). However, the DPD was replaced by the Rossendale Local Plan 2019 to 2036 (Local Plan) upon its adoption on 15 December 2021. The Council rely upon Local Plan Policies SS, SD1 and SD2 and those are the policies upon which I have considered this appeal.

The appeal on ground (d)

3. For an appeal to succeed on this ground, the appellant must satisfy me on the balance of probabilities that, at the date that the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice.
4. The appellant does not contradict the Council's view that they first became aware of the alleged breach of planning control in July 2022. While there is no precise date before me, this is not determinative, as it still falls some way short of the time limit of four years required to be immune from enforcement action even though I am mindful of the misinformation the appellant says that they were given by the Council. Therefore, on the balance of probabilities, the concrete post and panel fence has not been on the land for four years or more, and so is not immune from enforcement action. Thus, the appeal on

ground (d) does not succeed.

The appeal on ground (a)

5. The main issue is the effect of the proposal on the character and appearance of the area.
6. The appeal site relates to a detached dwelling situated on the corner of St Peters Avenue and Colldale Terrace. An existing low brick wall extends around part of the front boundary and along the flank boundary up to 11 Colldale Terrace. The concrete post and timber panel fence sits behind the wall to the side of the appeal property, before it returns to its front door, which is set back from St Peters Avenue.
7. Residential properties in the area typically have low boundary walls. Some are supplemented by landscaping, others are not. Some front boundaries are made up solely of landscaping. This means that properties are characterised by either an open or leafy frontage. There are some examples of tall fences near to the appeal site, but they are not the overriding characteristic of the area, nor do I know whether they benefit from planning permission or the circumstances that led them to be present, as they visually appear relatively new.
8. The concrete posts and fence extending from the front door to the flank boundary do not affect the openness of the corner plot. The use of concrete posts and timber panels is also not an unfamiliar feature within a residential area such as this, and the fence does fulfil the function of enclosing the appeal property's garden. Even so, the position of the tall fence immediately next to the low brick wall and Colldale Terrace has introduced a strident feature in the street scene that departs from the character that properties display where they front or adjoin a road. As such, the fence does not minimise its impact on the character of the area, nor does it improve the environmental conditions of it, even though its height becomes less obvious closer to No 11 owing to the staggered height of the brick wall.
9. The fence does provide the occupants of the property with privacy in their garden, and in turn, privacy for neighbouring occupiers from persons using the garden. I also note the reasons why the fence came to be, and I agree that it has not created a highway safety issue. However, these matters do not overcome my finding about the fence's unsympathetic position next to the road. This leads me to conclude that it is harmful to the character and appearance of the area and conflicts with Local Plan Policies SD1, SD2 and SS, together with paragraph 126 of the National Planning Policy Framework. These policies, among other things, jointly seek the design of development to minimise its impact on the character of the area so that it improves the environmental conditions of the area.

Conclusion

10. For the reasons given above, I conclude that the appeal 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.

Andrew McGlone

INSPECTOR