



Appeal Decision

Site visit made on 14 June 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st July 2023

Appeal Ref: APP/A1910/C/22/3302653

Land at 1 The Orchard, Kings Langley, Hertfordshire WD4 8JR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Benjamin Sterling (Kedgling Developments Ltd) against an enforcement notice issued by Dacorum Borough Council.
 - The notice, numbered E/21/00430/NPP, was issued on 5 July 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a fence on the Land.
 - The requirements of the notice are to: (a) Remove entirely from the Land, the wooden boundary fence and its supporting posts between the approximate positions X and Y as marked on the attached plan. OR (b) Reduce the wooden boundary fence and its supporting posts on the Land, between the approximate positions X and Y as marked on the attached plan, to a height not exceeding one metre above ground level.
 - The period for compliance with the requirements is: 6 (six) weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

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

Applications for costs

2. An application for costs was made by Mr Benjamin Sterling (Kedgling Developments Ltd) against Dacorum Borough Council. This is the subject of a separate decision.

Preliminary Matters

3. From the appellant's submissions it seemed to me that there was a hidden ground (g) appeal. I note there was correspondence with the Planning Inspectorate concerning this matter and that the appellant's understanding was that ground (g) was not pleaded because they considered it possible to remove the hurdles in the timeframe specified. Notwithstanding this, the appellant suggested the hurdles remain in situ until the building works are complete. Ultimately, this relates to the compliance period and therefore should form part of an appeal on ground (g). As I consider that there would be no injustice to either party, I will deal with this matter under ground (g).
4. There is no appeal on ground (a) therefore the planning merits of the matters alleged do not fall to be considered.

Ground (c)

5. The appeal on ground (c) is a claim that the development does not constitute a breach of planning control. In pursuing an appeal on these legal grounds, the onus firmly rests with the appellant to show, on the balance of probabilities,

- that the matters stated in the notice do not constitute a breach of planning control. The breach of planning control refers to the erection of a fence.
6. The appeal site occupies a corner plot in the cul-de-sac. Building works are currently ongoing. A low-level brick wall to the front of the property forms a border with the public highway. On the garden side of this wall is the fence which is the subject of this notice. There are visible signs of planting along the inner side of this fence. Metal security fencing, which is covered with debris netting, sits between the appeal fence and the wall. The metal fencing encloses most of the appeal fence and is roughly the same height. The appeal fence remains plainly visible through the metal fencing.
 7. The appeal fence is made of 'hurdles' which the appellant says are temporary in nature due to their life span of 7-8 years. They maintain that the intended use of the hurdles is to allow the hedge to establish over one or two years. It is also suggested by the appellant that the hurdles are a form of hoarding for the site while building works are in progress. Thus, the gist of the appellant's case under their appeal on ground (c) is that the fence does not constitute a breach of planning control because it is not a permanent structure.
 8. While the hurdles may have a lifespan of a few years, and the intention of the appellant may be for them to be in place for a limited amount of time and to aid the establishment of a hedge, the hurdles are physically attached to posts that are set into the ground and are performing a function of enclosing the space. The fence provides a physical barrier enclosing the open space to the front of the house and has remained in the same position for some time.
 9. Consequently, taking into account the evidence before me, I am satisfied that, as a matter of fact and degree, the fence comprises a physical alteration to the land of sufficient permanence that it constitutes development for the purposes of section 55 of the 1990 Act.
 10. Article 3(1) of the Town and Country (General Permitted Development) (England) Order 2015 as amended (the Order) grants planning permission for the classes of development set out in Schedule 2 of the Order. Within this section, Class A of Part 2 permits the erection, construction, maintenance or alteration of a gate, fence, wall or other means of enclosure constructed adjacent to a highway used by vehicular traffic no more than 1 metre above ground level.
 11. The fence, which is above 1 metre in height, is set behind the existing boundary wall which directly adjoins the footway that forms part of the highway, being a defined route over which the public can pass. The question, therefore, revolves around whether or not the fence is considered to be 'adjacent', or not, to the highway. The word 'adjacent' is not defined in the Planning Act and it has been held that legislators were not likely to have intended 'a one size fits all approach'. The common dictionary definition of 'adjacent' is 'lying near' or 'contiguous', although Case Law shows that 'adjacency' does not equate to 'contiguous' or 'abutting'.
 12. Thus, the position established by the courts is that the word 'adjacent' does not necessarily mean that the fence has to be abutting or touching the highway. A wall or fence can be set back from a highway, but still be 'adjacent' to it, as a matter of fact and degree, provided that the enclosure is clearly to define the

boundary of the property concerned from the highway and is perceived to do so.

13. In this case the fence along with the wall, which it exceeds in height, are clearly intended as a means of enclosure to the appellant's land. Having seen the location in conjunction with the highway, it is my view that the fence would, as a matter of fact and degree, be 'adjacent' to the highway and, despite the intervening lower-level brick boundary wall, would be perceived as such.
14. Consequently, I find that the development does not constitute development permitted by Class A of Part 2 of Schedule 2 of the Order. Planning permission for it is not therefore granted by virtue of Article 3. I conclude that the alleged breach does constitute a breach of planning control and express planning permission is required.
15. The appeal on ground (c) therefore fails.

Ground (f)

16. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or any injury to amenity. Since the notice requires the removal of the fence, the purpose is to remedy the breach (s174(4)(a)). For the appeal on ground (f) to succeed, the appellant must propose alternative steps which would remedy the breach.
17. The notice requires the appellant to either remove the fence and supporting posts from the land or reduce its height not exceeding one metre above ground level. No lesser steps have been advanced by the appellant to show if any could be taken to remedy the breach of planning control. The requirements of the notice are not considered excessive in these circumstances but are the minimum necessary to remedy the breach that has occurred. There is nothing short of either removing the fence in its entirety or reducing its height that would achieve the purpose behind the requirements.
18. Accordingly, the appeal on ground (f) fails.

Ground (g)

19. An appeal on ground (g) is that the period for compliance specified in the notice falls short of what should be reasonably allowed. The notice gives a period of six weeks.
20. A case has been brought for the temporary retention of the fence to allow the hedge to establish and form a natural boundary, and to provide security for the site while building works are ongoing. I note it is suggested that the hedge would likely establish in 1 to 2 years, and while it may be the intention of the appellant to remove the fence when the building works are complete, there is no indication as to when that might be. Nevertheless, metal barrier fencing, a style of fencing that is more frequently associated with building sites has been installed to the outer side of the appeal fence, and this I consider could go some way to address security matters.
21. The appellant has highlighted several examples of boundary fencing which they consider to be similar to support the temporary retention of their fence. I

acknowledge that there may indeed be other examples of boundary treatments in the vicinity, and the appeal fence may assist in establishing the hedge, although no evidence has been provided to support this argument. However, planning merits may only be considered pursuant to an appeal on ground (a), where that is pleaded, and the fee is paid for the deemed planning application. As an appeal has not been brought on ground (a), arguments cannot be introduced on the merits in the context of an appeal on either ground (f) or ground (g) and whether planning permission should be granted either on a temporary or permanent basis.

22. Accordingly, the appeal on ground (g) does not succeed.

SA Hanson

INSPECTOR