



Appeal Decision

Site visit made on 18 July 2023

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2023

Appeal Ref: APP/N4720/C/23/3317198

197 Sissons Road, Middleton, Leeds LS10 4LP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Uwimana Shamsa Mbonabalyi against an enforcement notice issued by Leeds City Council.
 - The notice, numbered 20/01183/UHD3, was issued on 24 January 2023.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a boundary fence and gates exceeding one metre in height, located adjacent to a highway used by vehicular traffic.
 - The requirements of the notice are:
 - Step 1: Dismantle and remove all the unauthorised fence and gates, or
 - Step 2: Reduce the unauthorised fence and gates to no higher than one metre above ground level.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) 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.

Procedural Matter

2. The appellant's case includes reasons why they have erected the fence and gates, along with the potential impact on their well-being and security of their property if the fence and gates must be removed. These matters can only be considered when an appeal has been brought on ground (a). There is no ground (a) appeal, and these matters are not before me for consideration.

Appeal on ground (d)

3. An appeal on this ground is that, at the date the notice was issued, no enforcement action could be taken due to the passage of time. The matter alleged is operational development and the relevant period is 4 years. It is for the appellant to show, on the balance of probability, that the fence and gates have been erected for 4 or more years.
4. The appellant claims that the fence was erected in January 2019 with the gates being fitted on 10 January 2019. A 'FREE ESTIMATE' from Ashton Metal Fabrication, dated 10 January 2019, for '1 sliding gate' is provided. This document is marked up as a 'Duplicate' and, in a central position on the document, is the word 'supplied' along with further letters which perhaps read 'filler' or 'fitted'.
5. The appellant's evidence does not have to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less

than probable, there is no good reason to dismiss the appeal. The appellant's evidence alone would however have to be sufficiently precise and unambiguous.

6. The Council has provided several Google images. The ones with an image capture date of August 2019 are Streetview images and show a low fence adjacent to Sissons Road and Sissons Terrace, with no gates to the vehicular access. While the images dated 23 April 2020 allegedly continue to show the low fence and no gates, they are aerial view images and the height of the fence cannot be ascertained.
7. The appellant's written submission is unsworn, there is no evidence to corroborate when the fence was erected, and the 'FREE ESTIMATE' for the gate contains no evidence to show when the gate was physically fitted. Furthermore, the 'FREE ESTIMATE' is a 'duplicate' copy and the date when it was produced and the reason for its production has not been provided. I find this evidence imprecise and ambiguous.
8. If the fence and gates had been erected and installed in January 2019, there is a reasonable expectation that the Google Streetview images dated August 2019 would show them in situ. Instead, they show a low fence and no gate to the vehicular access. The appellant had an opportunity to comment on the Council's evidence but did not do so.
9. The Google imagery casts doubt on the appellant's version of events. The appellant's evidence is also imprecise and ambiguous. The appellant has therefore failed to show, on the balance of probability, that the fence and gates were erected 4 or more years before the notice was issued.
10. For the reasons given above, I conclude the appeal shall not succeed. I shall uphold the enforcement notice.

M Madge

INSPECTOR