



Appeal Decisions

Site visit made on 1 August 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2023

Appeal A - Ref: APP/Z0116/C/22/3310004

Appeal B - Ref: APP/Z0116/C/22/3310005

2 Bramble Drive, Bristol BS9 1RE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Dr Suvarna Mahavarkar and Appeal B is made by Dr Chendrimada Madhu, against an enforcement notice issued by Bristol City Council.
- The notice was issued on 27 September 2022.
- The breach of planning control as alleged in the notice is without the grant of planning permission the attachment of timber fencing to the pre-existing front boundary wall.
- The requirement of the notice is to:
Remove the fencing in its entirety and remove all demolition material from the site.
- The period for compliance with the requirement is:
9 months after the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) 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. Appeal B 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.

Decisions

Appeals A and B

1. The appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (c)

2. This ground of appeal is that the matters alleged by the notice do not constitute a breach of planning control. This could be that planning permission was not required, or was already granted, perhaps by comprising permitted development under The Town and Country Planning (General Permitted Development) (England) Order 2015.
3. The appellants have stated that it is their understanding that a fence up to one metre in height does not require planning permission, and that consideration has been given to complying with this limitation. The fencing has been erected directly on top of an existing wall, alongside a footway and is staggered in its design. Being attached directly atop the wall, both the wall and the fence comprise a single means of enclosure and thus the combined height is the relevant consideration. There is nothing before me to show that the wall and attached fencing complies with the one metre height requirement, and the appellants have not demonstrated that it does so.

4. Accordingly, I am satisfied that a breach of planning control has occurred and there is nothing before me to confirm otherwise. Therefore, the appeals under ground (c) fail.

Ground (a) – the deemed planning application

Main issue

5. The main issue is whether or not the fence preserves or enhances the character and appearance of the Sneyd Park Conservation Area.

Reasons

6. The site lies within the Sneyd Park Conservation Area. I observed that the significance of this designated heritage asset lies, in part, in the quality of the streetscape, which is particularly verdant in places. While there is variety in the treatment to the frontages of properties within the area, there is a significant amount of planting and vegetation along front boundaries to the streets that creates a soft and attractive appearance.
7. The erection of timber fencing atop of the existing brick wall to the frontage of the property has created an intrusive and visually dominant boundary feature. To many other frontages within the general vicinity, there were trees, shrubs and other planting which positively contributed to the appearance of the vicinity. This is not the case with the appeal site, where the fencing is a harsh and harmful addition to the streetscene. At the time of my visit, there had been planting undertaken to the rear of the fencing, however this was not generally visible from vantage points within the street and had little effect in ameliorating the visual impact of the fencing itself.
8. The appellant has contended that the fencing has been erected in the interests of safety, due to the difference in levels between the footway outside of the site and the ground level within the site. While I noted that there was some difference in levels, this did not appear to me to be significant. Moreover, I am not convinced that the current fencing is the only available method of protecting against individuals falling into the site. The appellant has stated that the street is a busy thoroughfare for walkers accessing the nearby nature reserve, as well as that there has been an incident previously of a child falling off the previous low wall. While this is noted, as I mention above, I do not consider that it has been adequately demonstrated that the fencing is the only means of preventing this.
9. There is also mention of there being a gap underneath the sliding gate for the property, due to the sloping nature of the road. However, the erection of fencing to the height that currently exists would not be necessary to keep this gap safe.
10. I note that some properties in the area have undergone renovation, that new dwellings have been constructed, and that there is variety in the design and materials used for other means of enclosure to the frontages of properties within the surrounding area. Nonetheless, none of these examples are directly comparable to the development being enforced against. They differ in terms of materials used, height of enclosure and degree of visual permeability. Thus, none of these examples convince me that the existing development at this site is acceptable.

11. Accordingly, I find that the fence fails to preserve or enhance the character and appearance of the Conservation Area. Consequently, I give this harm considerable weight in the planning balance of this appeal.
12. Paragraph 199 of the National Planning Policy Framework (the Framework) advises that when considering the impact on the significance of designated heritage assets, great weight should be given to their conservation. It goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets. Given the harm to the character and appearance of the Conservation Area, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
13. Although not mentioned by the parties, as required by paragraph 202 of the Framework, I have had regard to any public benefits of the proposed development. However, any such benefit, which would include the appellant's contended benefit to public safety, attracts limited weight and is not sufficient to outweigh the harm that I have identified.
14. Given the above and in the absence of any significant public benefits, I find that the fencing conflicts with policies BCS21 and BCS22 of the Bristol Local Plan: Core Strategy, as well as policies DM26 and DM31 of the Bristol Local Plan: Site Allocation and Development Management Policies. Together, and amongst other things, these policies seek to ensure that new development is of a high quality, contributes to local character, and safeguards heritage assets. There is also conflict with the design and heritage asset protection aims of the Framework.
15. The development conflicts with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given above, the appeal on ground (a) fails.

Ground (f)

16. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. The enforcement notice seeks the removal of the entirety of the fencing and as such the purpose is clearly to remedy the breach.
17. I have not been provided with any lesser steps that would remedy the breach of planning control and as such, I consider that the steps outlined in the notice are reasonable and necessary.
18. The appeals on ground (f) therefore fail.

Ground (g)

19. The ground of appeal is that the time given to comply with the notice is too short. The appellants state that they intend to have a green hedge and that the fencing has been erected temporarily until the hedge grows. It is contended that "at least a [sic] few years" is required. However, I noted at the time of my visits that the planting behind was almost to the height of the fencing, indicating that it is at a sufficient height. I am also conscious that larger, taller plants could be introduced should they be required.

20. Accordingly, I find no reason to conclude that the time given is too short and thus the appeals on ground (g) fail.

Conclusion

21. For the reasons given above, I conclude that the appeals 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.

Martin Allen

INSPECTOR