



Appeal Decisions

Site visit made on 3 August 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023

Appeal A Ref: APP/U2615/C/22/3295562

Land at 2 Waterland Close, Caister-On-Sea, Great Yarmouth NR30 5TL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr W Smethurst against an enforcement notice issued by Great Yarmouth Borough Council.
 - The enforcement notice was issued on 28 February 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, and within the last 4 years, the erection of boundary fence over one metre in height on the southern and western boundary of the property adjacent to the public highways, Covent Garden Road, Caister-On-Sea and Waterland Close, Caister-On-Sea.
 - The requirements of the notice are to:
 1. Remove the entirety of the boundary fence erected on the southern and western boundary of the property from the land.
 - The period for compliance is 1 calendar month from the date this Notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/U2615/W/22/3295557

2 Waterland Close, Caister-On-Sea, Great Yarmouth NR30 5TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr W Smethurst against the decision of Great Yarmouth Borough Council.
 - The application Ref 06/21/0916/F, dated 1 November 2021 was refused by notice dated 23 December 2021.
 - The development proposed is described as '*a fence constructed around the perimeter of the property...*'
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Formal decisions

Appeal A

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

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. Given that the development, the subject of the s78 appeal is identical to that enforced against I have changed the description of the development from that set out on the application form as it is effectively a narrative. The new wording is that used by the Council in the enforcement notice. This better focusses on the development involved.
4. The enforcement notice requires for the fence to be removed as Schedule 2, Part 2, Class A.1(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 stipulates that boundary enclosures adjacent to a highway should be to a height of no more than 1m, otherwise planning permission is necessary. Given the location of the fence at issue this proviso directly applies and the development is unauthorised.

Background

5. Having been made aware that a fence had been erected at the property which required the benefit of planning permission the Council contacted the owner to make clear that the planning position needed regularising. A planning application seeking retrospective planning permission was subsequently submitted in November 2021, indicating that the fence had been erected some two months earlier. Planning permission was refused in December 2021 and, in the circumstances, the Council considered it expedient to issue an enforcement notice, the subject of Appeal A.
6. The decision to refuse permission has also been appealed, and this is the subject of Appeal B. The main issues for both appeals are identical.

Appeal A on ground (a) – the deemed planning application (DPA) and Appeal B

Main Issues

7. The main issues are:
 - 1) the effect on the character and appearance of the dwelling and its surrounding area; and
 - 2) whether the development adversely impacts on highway safety.

Reasons

Character and appearance

8. This garden fence wraps the property's curtilage at its boundary to the footway, spanning from its south-eastern point on Covent Garden Road to the point on Waterland Close off which a short path leads to no 2's front door. Beyond this point, up to the north-western limit of the appeal site, the boundary with the footway is enclosed with shrub hedging.
9. With a gravel board base the timber-panelled fencing stands to a total height of some 2m from pavement level and forms a continuous sweep, so much so that the bungalow and its surrounding garden are enclosed to the point that they are largely hidden from public view.
10. Although there are boundary enclosures of different types, arrangements and heights along Covent Garden Road the treatment along Waterland Close is very

different with a series of bungalows typically set back behind front, lawned gardens bounded by low walls or vegetation.

11. More closely, no 1 Waterland Close, directly opposite, has a low wall and a series of shrubs screening its curtilage, following the curve from Covent Garden Road into Waterland Close. This makes for a more visually attractive arrangement. As indicated, some shrubs still remain along no 2's boundary with Waterland Close after the fencing ends, but the fence's prominent sweep around the junction predominates. This is further exacerbated by the fact that the pavement along Waterland Close, immediately outside no 2, is greatly reduced in width to the point where it is not safely functional as a walkway. This contrasts with the standard width footway directly opposite. A further consequence is that the said arrangement accentuates the verticality of the fencing targeted and thereby its obtrusiveness, being set only just off the carriageway.
12. It is this particular arrangement, as described, which sets it aside from a garden fence referred to by the appellant, on the opposite side of Covent Garden Road. Although of similar height to the fence at no 2, it is set behind both a grassed verge and a standard width footway and, further, is linear in form. These factors, taken together, mean that the two fences within their particular contextual settings are not appreciably comparable.
13. I conclude that the fence at no 2 has a harmful effect, by the degree of resultant enclosure and, given the visual juxtaposition, its harsh solidity. This has removed any active frontage. It also conflicts with the general objectives of policy CS09 of the Council's Core Strategy (CS).

Highway Safety

14. The Local Highways Authority (LHA), Norfolk County Council, has raised concerns as to the fence being erected adjacent to the property's driveway off Covent Garden Road, due to potential obstruction to visibility, primarily in relation to pedestrians.
15. Accordingly, the LHA has requested that a 2m x 2m visibility splay is created by returning the fence at a 45 degree angle adjacent to the driveway where it meets the public highway so as to ensure appropriate intervisibility to and for pedestrians. The LHA recommended that plans be drawn up to illustrate the proposed alterations, and that the authority be reconsulted but, due to the considered harm to the street scene, no amendments were sought by the application's case officer.
16. From my site visit I can understand the LHA's concerns, and I note that the appellant has offered to reduce the fence height at this point to 3 ft, or 0.91m. However, this is only an indication and is not a firm proposal backed up with illustrative drawings. As such, I am unable to take the proposed modification into account.
17. As it stands I have found that, when pulling off the driveway, either in reverse or forward gear, the emerging vehicle could easily prove hazardous to approaching pedestrians and, in the absence of illustrative proposals otherwise, I must conclude that the development is at odds with both CS policy CS16 and paragraph 111 of the National Planning Policy Framework.

Other Considerations

18. I have had regard to the appellant's representations, and although I do sympathise, the points that are raised do not alter my conclusions. I am, though, mindful that removal of the fence from the land, as required, would obviously leave the property vulnerable, and this would be unacceptable in itself.
19. The appellant will therefore doubtless wish to explore alternative solutions with the Council, yet he has not brought any appeal on ground (g) ie. that the time period specified for compliance is unreasonably short, and I am therefore unable to extend this period which would have allowed discussions to take place.
20. In the circumstances, although dismissing the appeal, I would urge both main parties to come together as soon as is reasonably possible with a view to reaching an agreement, at least in principle, as to the dwelling's long term security – one of the provisos of CS policy CS09. In this regard the Council does hold powers to extend compliance periods in particular instances, as might be required.

Conclusion

21. For the reasons given above I conclude that the appeals should not succeed. I shall therefore uphold the enforcement notice and refuse to grant planning permission.

Timothy C King

INSPECTOR