



Appeal Decisions

Site visit made on 7 September 2023

by Ms S Watson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2023

Appeal A Ref: APP/A4710/C/23/3316523

Appeal B Ref: APP/A4710/C/23/3316524

17 White Hart Fold, Ripponden, Sowerby Bridge, HX6 4JS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeals are made by Mrs Cheryl Blackbond (Appeal A) and Mr Robert Jennings (Appeal B) against an enforcement notice issued by Calderdale Metropolitan Borough Council.
- The notice, numbered 18/60215/ENF, was issued on 20 January 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a timber fence over the height of 1 metre on the west and south boundary of the land adjacent to the estate access road which is a highway used by vehicular traffic (as seen in the digital photographs attached to this notice at Appendix 1).
- The requirements of the notice are to: Permanently remove from the land the timber fence (including the posts) on the south and west boundary of the land, as seen in the digital photographs attached to this Notice at Appendix 1.
- The period for compliance with the requirement is: 2 months.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals partly succeed and the requirements of the notice are varied accordingly as set out below in the Formal Decision.

Preliminary Matter

1. There is no appeal under section 174(2)(a) of the 1990 Act. As such there is no deemed planning application to consider. Consequently, I cannot take account of any matters of planning merit such as the effect of the fence on the need for security, privacy or an area in which a child can play safely.

Reasons

2. An appeal on ground (f) requires consideration of whether the steps required by the notice exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The step that is required by this enforcement notice is to remove the fence. The purpose of the notice therefore clearly comes under S173(4)(a) of the 1990 Act which is remedying the breach by restoring the land to its condition before the breach took place.
3. Whilst permitted development rights cannot be applied retrospectively to the development carried out, it is a fallback position that if the whole fence was removed the appellants would have permitted development rights to erect another fence up to 1m in height. The Council accept in its statement that a 1m fence could be erected following the removal of the existing fence.

4. The appeal process is meant to be remedial and not punitive. Within the context of what is allowed under permitted development, it would be punitive for the sake of it to require the whole of the fence to be removed.
5. I therefore conclude, having had regard to all other matters raised, that the breach of planning control could be remedied by a lesser step and the requirements of the enforcement notice should be varied accordingly. The ground (f) appeal therefore succeeds in part.

Formal Decision

6. It is directed that the enforcement notice be varied by deleting paragraph 5 of the notice and replacing it with "Reduce the timber fence to 1m in height (including the posts) on the south and west boundary of the land, as seen in the digital photographs attached to this Notice at Appendix 1 and permanently remove from the land the removed part of the fence."
7. Subject to this variation Appeals A and B are dismissed and the enforcement notice is upheld.

Siobhan Watson

INSPECTOR