The Planning Inspectorate

Appeal Decisions

Site visit made on 22 August 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2023

Appeal A: APP/C1435/C/23/3314283
Appeal B: APP/C1435/C/23/3314284
Land at 1 Fern Cottage, Three Cups, Warbleton, East Sussex

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Madeline Maynard (Appeal A) and Mr Daniel Maynard (Appeal B) against an enforcement notice issued by Wealden District Council.
- The enforcement notice was issued on 10 November 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a close-boarded wooden fence and metal entrance gates in excess of 1 metre in height adjacent to the highway.
- The requirements of the notice are: Either i) Demolish, dismantle and remove the fence and fence posts and/or piers from the Land ii) Demolish, dismantle and remove the gates and all gate posts and/or pillars from the Land iii) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements. Or i) Reduce the height of the fence and all posts and/or piers along the road frontage to a maximum of 1 metre in height ii) Reduce the first 2m of fence panels, running perpendicular to the road frontage and defining the boundary with the adjoining property, to a maximum height of 1m iii) Set the gates and gate posts and/or pillars back into the Land by a minimum distance of 5.5m from the edge of the highway iv) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision

1. The appeals are dismissed and the enforcement notice upheld.

The ground (f) appeals

2. The purpose of the enforcement notice is to remedy the breach of planning control, noting that alternative requirements are provided in an effort to ensure the fence and gates would then accord with permitted development rights as otherwise set out in the Order[1].

3. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellants to explain why the requirements of the notice exceed what is

[1] Schedule 2, Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015

necessary to remedy the breach of planning control and propose lesser alternatives steps.

4. I appreciate there are other examples of fencing and gates in the locality. However, there is no ground (a) appeal before me to consider the planning merits of retaining the fence and gates the subject of the notice. This would have included matters such as whether the development was in keeping with the area, highway safety and security concerns.

5. Even though the notice is said to relate to a replacement fence, planning permission would still be required where it exceeds the relevant permitted development rights as set out in the Order. This and the other matters raised, such as the cost of the fence and gates, or retaining the gates in-situ, therefore do not demonstrate why either set of requirements would be excessive to remedy the breach, namely fencing and gates exceeding 1m in height adjacent to the highway.

6. The appeals on ground (f) therefore fail.

Formal Decisions

Appeals A and B

7. The appeals are dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR