



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2023

Appeal Ref: APP/E2734/C/22/3309103

23 Greenfields Road, Harrogate, North Yorkshire HG2 7BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mrs Angela Sanderson against an enforcement notice issued by Harrogate Borough Council.
 - The notice was issued on 11 October 2022.
 - The breach of planning control as alleged in the notice is without planning permission the erection of timber fence in excess of 1m in height adjacent to a highway.
 - The requirements of the notice are to:
Either
1) Remove the fence and all materials used in its construction from the land
Or
2) Reduce the height of the fence to a height not exceeding 1 metre.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the ground set out in section 174(2)(f) 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.

Preliminary Matter

2. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site given the ground of appeal and points in dispute.

The appeal on ground (f)

3. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
4. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the breach of planning control which has occurred. The second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.
5. In this case the enforcement notice requires either the removal of the fence or its reduction in height, as such I find its purpose is to remedy the breach of planning control that has occurred.
6. This purpose can only be achieved by either restoring the land to its condition before the breach took place – in other words by removing the fence and removing all associated materials as set out in the requirements of the notice, or, reducing the height of the fence to that which would have constituted

permitted development by virtue of Article 3 Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which permits the erection of a gate, fence, wall, or other means of enclosure subject to conditions and limitations.

7. Whilst I have sympathy for the appellant's circumstances and that they were not responsible for erecting the fence, these matters have no bearing on this ground of appeal.
8. The appellant stated that they would be happy for the Council to complete the required works. However, the Council explained that whilst they have powers to carry out the required works in default, should the enforcement notice not be complied with in the specified period, they would also seek to recover the costs of such work from the appellant. In any event, this is a matter for the appellant and Council away from this appeal.
9. Whilst I acknowledge the representation of support from a neighbour, the matters raised primarily concern planning merits. However, where there is no appeal under ground (a) consequently there is no deemed application for planning permission, as such there can be no consideration of the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose.
10. The appellant has not suggested any lesser steps and since the requirements would do no more than seek to achieve the purpose of the notice - to remedy the breach of planning control, they are not excessive. The appeal on ground (f) therefore fails.

Conclusion

11. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Felicity Thompson

INSPECTOR