



Appeal Decision

No site visit required

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 06 October 2023

Appeal Ref: APP/W1715/C/22/3311550

7 Lynton Road, Hedge End, Eastleigh, Hampshire, SO30 4EY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Anwar Hmimssa against an enforcement notice issued by Eastleigh Borough Council.
- The notice was issued on 20 October 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a fence in excess of 1 metre in height above ground level and adjacent to the highway. The approximate position of the fence is shown black on the attached plan.
- The requirements of the notice are: 5.1 remove from the land the unauthorised fence and fence posts as marked in black on the attached plan OR; 5.2 reduce the unauthorised fencing and fence posts so that it does not exceed 1 metre from ground level as marked in black on the attached plan; 5.3 please remove any waste items that result from the works to an authorised place of disposal.
- The period for compliance with the requirements is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d) 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 have lapsed.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The Appeal on Ground (b)/(c)

2. This ground is that the matters alleged have not happened. Clearly a new fence has been erected, that is not in dispute, so there can be no success on ground (b). However, the appellant argues the fence is merely a replacement for an existing one – in other words he does not need planning permission for it. That is a hidden ground (c), and although the Council have not commented on ground (c) I can deal with it without injustice as it does not succeed.
3. The Act defines development at s55 as, amongst other things, “*building operations*”. These include the demolition or rebuild of buildings where “*building*” is defined as “*any structure or erection*”. Thus erecting a fence is a building operation that requires planning permission. The General Permitted Development (England) Order 2015 only grants planning permission at Schedule 2 Part 2 Class A for a fence that is adjacent to the highway to be no more than 1m in height. Thus the fence at 2m does not benefit from permitted development rights.
4. I should note that the appellant has not argued that parts of the fence are not adjacent to the highway. Adjacent can mean next to or close to, and so can

encompass short stretches of front garden fences that run perpendicular to the highway, as in this case.

5. The appellant points out that there had been a 2m fence in the same place for many years, he has merely replaced like for like. It seems the old fence was not in a good condition and in 2018 a local builder was asked to remove the fence to enable building works to be undertaken at the property. In 2021 he returned and erected the current fence. As noted above the erection of a fence is development. The only way that it could be excluded is if it fell within s55(2) which lists a series of actions that do not involve development. The only relevant one is s55(2)(a)(ii) which says that the maintenance or improvement of a building is not development as long as it does not "*materially affect the external appearance of the building*".
6. For the purposes of this appeal, the fence is a building and so removing it and completely replacing it does not count as maintenance or improvement and if it did it would clearly have altered the external appearance of the fence as it is brand new with concrete posts. Consequently, the new fence does require planning permission and the ground (c) appeal must fail.

The appeal on Ground (d)

7. This ground is that it is too late to take enforcement action because, in this case the fence was erected more than 4 years before the notice was issued. The notice was issued on 20 October 2022, so the fence had to have been in place on or before 20 October 2018. In fact the appellant's own evidence is that it was erected in 2021 so this ground cannot succeed. The previous fence would have been immune from enforcement if it had been up for 4 years prior to its removal in 2018, but once removed, the clock starts again and the new fence has only been in place for a year or so.

Conclusion

8. I shall dismiss the appeal and uphold the notice.

Simon Hand MA

INSPECTOR