



# Appeal Decision

Site visit made on 3 October 2023

**by Katie Peerless Dip Arch RIBA**

**an Inspector appointed by the Secretary of State**

**Decision date: 11<sup>th</sup> October 2023**

## Appeal Ref: APP/T2215/C/22/3310396

### Yew Tree Cottage, Shirehall Road, Hawley, KENT, DA2 7SE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Debby Ebanks against an enforcement notice issued by Dartford Borough Council.
- The notice, numbered 21/00240/ENF, was issued on 18 October 2022.
- The breach of planning control as alleged in the notice is the erection/construction, adjacent to highways used by vehicular traffic, of close-boarded fencing (as supported by concrete posts and gravel boards), exceeding 1m (above ground level), marked x on the plan, being the boundaries of the land adjacent to Shirehall Road and Ash Road.
- The requirements of the notice are to: (i) Remove the close-boarded boundary fence, concrete posts and gravel boards situated on the boundary of Yew Tree Cottage on Shirehall Road and Ash Road. (ii) Remove from the land all building materials and rubble arising from compliance with the first requirement above, and restore the land to its condition before the breach took place.
- The period for compliance with the requirements is 56 days.
- The appeal is proceeding on the grounds set out in section 174(2)(f) & (g) of the Town and Country Planning Act 1990 as amended.

## Decision

1. It is directed that the enforcement notice is varied by the addition of the following words to requirement (ii): *'or replace the boundary fence to comply with the details approved under planning permission ref: 22/01375/FUL.'*
2. Subject to this variation, the enforcement notice is upheld.

## Planning history

3. An appeal<sup>1</sup> against the refusal of a planning application<sup>2</sup> for the fence referred to in the enforcement notice (EN) was dismissed in August 2022. Although at the time of the submission of the local planning authority's appeal statement an application<sup>3</sup> for a modified fence had not been determined, I see from their website that it was approved in May 2023.

## Preliminary Matters

4. At my site visit, I saw that the original fence that is the subject of the EN has been replaced by another development that appears to be similar to that approved in 2023. However, there are some differences between the fence as built and the approved plans; for instance there has been no brick slip cladding added to the lower section adjacent to the road and there are sections of trellis behind parts of the fence that are not shown on the drawings.

<sup>1</sup> APP/T2215/D/22/3298647

<sup>2</sup> 21/01449/FUL

<sup>3</sup> 22/01375/FUL

5. I am therefore unaware of whether the appellant now considers the development to be complete and if the local planning authority has accepted the revised development as it now exists or whether further modifications are required or planned.

### **Main Issues**

6. As the appeal is proceeding only on grounds (f) and (g), I consider the main issues to be (i) on ground (f): whether steps could overcome the breach of planning control or injury to amenity and (ii) on ground (g): whether the time for compliance is reasonable.

### **Reasons**

#### *Ground (f)*

7. The appellant's case on ground (f) is that the approval of a planning application that proposed a reduced and differing design would establish that the requirement to remove/demolish the whole of the boundary treatment is excessive.
8. As planning permission for such a scheme has been approved, I agree that it would now be excessive to require the complete removal of all the materials used in the original construction and the restoration of the land to its previous condition. I will therefore add the option of implementing the 2023 permission to requirement (ii) as an alternative.

#### *Ground (g)*

9. Although I have not been told whether or not the alterations to the fence took place within the time frame specified within the EN, as the changes have now taken place, I see no reason to adjust the original time allowed. Also, as the requirements will now be varied to include the option of the revised scheme, the appellant will have the original period of 56 days to ensure that the revised design meets the approval of the local planning authority. As the majority of the work appears to have been completed, I consider this to be a reasonable time frame.

### **Conclusion**

10. For the reasons given above, I conclude that [the requirements of the notice are excessive to remedy the breach of planning control. I shall therefore vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

*Katie Peerless Dip Arch RIBA*

INSPECTOR