



Appeal Decision

Site visit made on 7 August 2023

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

Appeal Ref: APP/P0119/C/22/3308634

Land at Land To South Of High Street/Church Road, Wick, South Gloucestershire, BS30 5PE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended.
- The appeal is made by Wick Land Limited against an enforcement notice issued by South Gloucestershire Council.
- The notice was issued on 22 September 2022.
- The breach of planning control as alleged in the notice is "Without planning permission, the erection of 2.4m high wooden fencing, gate and supporting structure installed to the front of the site (as shown in the attached photographs)".
- The requirements of the notice are to:
 1. Remove the fencing, gate and supporting structure from the land edged red (in the location shown in blue) on the attached aerial.
 2. Restore the land to its condition before the breach occurred.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction, as set out below in the Formal Decision.

Preliminary Matters

1. I have a duty to get the notice in order and s176(1) of the Act grants powers to correct any defect, error or misdescription in the enforcement notice, provided it would not result in injustice to the parties. The first requirement in paragraph 5 of the notice makes reference to "the attached aerial". From the full wording of the requirement and the documentation attached to the notice, it is reasonably clear that this refers to what could be described as an aerial image, on which the land and the location of the fence has been identified. However, it would have been clearer if the notice had referred to "the plan attached to the notice" rather than "the attached aerial". The appellant has not queried this element of the notice and it is obvious that they understand what needs to be done to comply with the notice. I am therefore satisfied that I can correct the notice in this way, to improve clarity, without causing injustice.
2. The appeal form gave the agent, Miss Sara De Barros, as the appellant. It was subsequently confirmed, and the records updated accordingly, that the appeal was made by Wick Land Limited.
3. No representative for the appellant arrived at the scheduled accompanied site visit. Consequently, I undertook my own measurements. In addition, I witnessed the Council representatives undertaking measurements and recorded the outcome.

The appeal on ground (c)

4. The ground of appeal is that the matter alleged does not constitute a breach of planning control. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
5. During my site visit I observed that metal gate posts, holding metal framed mesh gates were in place at the western end of the site frontage. The remainder of the frontage contained wooden uprights, concreted into the ground, with wooden rails between them to provide a supporting structure for panels. For about half of the frontage, solid chipboard panels were attached to the supporting structure to form a fence. For the remainder of the frontage, in intermittent sections, the panels had been removed from the supporting structure, or had fallen down, with many remaining in situ, on the ground.
6. At the time of my site visit, the wooden uprights were approximately 2.6 metres high. The solid chipboard panels attached to the uprights to form the fence were approximately 2.4 metres high. The metal gate posts and gates were approximately 2.7 metres high. Despite the gaps in the panels, the height appeared unchanged between when the notice was served and the time of my site visit.
7. The erection of a fence comprises operational development within the meaning of s55 of the Act for which, s57 indicates, planning permission is required. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) relates to minor operations and permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. The GPDO states that development is not permitted if the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1 metre above ground level (except in the case of a school), or the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level.
8. The Council state that the fencing and gates are adjacent to the highway and exceed 1 metre. The appellant states that the fence is "approximately 1.8 metres high on the frontage of the application site" so is "within the tolerances of the permitted development class". The appellant has provided no evidence to support their height claim. Therefore, regardless of whether the fence is considered to border the highway, or not, the fence, gates and supporting structures exceed 2 metres, so do not accord with the specified limitations and therefore are not permitted by Schedule 2, Part 2, Class A of the GPDO.
9. I conclude that the matters stated in the notice do constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

The appeal on ground (f)

10. The ground of appeal is that the steps required by the notice to be taken, 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 notice requires the

removal of the fencing, gate and supporting structure, and restoration of the land to its condition before the development, in order to remedy the breach.

11. In regard to ground (f), the appellant states that the fence has been erected to provide a degree of privacy on-site and that when measured from ground level the measurements of the fencing comply with the tolerances of permitted development. As set out above, the fence, gate and supporting structures exceed the height limits of permitted development. A desire for privacy is a matter which would more properly fall to be considered under an appeal on ground (a), and not ground (f). No ground (a) appeal has been made in this case.
12. I also note that the site is currently an undeveloped field, and no reason has been provided as to why privacy might be sought. The appellant has not suggested any lesser measures which might remedy the breach of planning control in relation to the development subject to the notice, or, which might remedy any injury to amenity.
13. I conclude that the steps required do not exceed what is necessary to achieve the purpose of the notice. Accordingly, the appeal on ground (f) fails.

Appeal on ground (g)

14. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is one month. The appellant argues that this is not reasonable in light of the fact that the fence was erected by a contractor, would need to be removed by the said contractor, and 1 month would not give enough time. They request at least 3 months.
15. As set out above, during my site visit I observed that sections of chipboard panels had been removed or fallen down already. In addition, while the uprights were concreted into the ground, a couple had been removed or fallen down, leaving the concrete footing intact. This suggests that removal of the fence panels and the supporting structure would not be a substantial task, or one requiring a specialist or particular contractor.
16. Consequently, I am satisfied that the compliance period of one month stated in the notice would be sufficient to physically carry out the requirements of the notice. Therefore, the appeal on ground (g) fails.

Other Matters

17. The appellant states that the fence would be less noticeable when it weathers and would not harm the character and appearance of the locality. Planning merits such as these would properly fall to be considered under an appeal on ground (a) and no ground (a) appeal has been made in this case.

Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, with a correction.

Formal Decision

19. It is directed that the enforcement notice is corrected by the deletion of the words "the attached aerial" in paragraph 5(1.) and the substitution of the words "the plan attached to the notice". Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

H Davies

INSPECTOR