The Planning Inspectorate

Appeal Decision

Site visit not required

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27TH NOVEMBER 2023

Appeal Ref: APP/Q4245/C/23/3326113
Land at 18 Pollen Road, Altrincham WA14 4HA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Ben Cullen against an enforcement notice issued by Trafford Borough Council.
- The enforcement notice was issued on 15 June 2023.
- The breach of planning control as alleged in the notice is without planning permission the alteration of fence to rear garden.
- The requirements of the notice are 1) remove fence panels, posts and kick boards at the rear of the site, shown in photographs ENF/01, ENF/02 and ENF/03 and indicated by the red line on the attached drawing ENF/04, 2) return the fence at the rear of the property to its previous condition and position before the breach took place, indicated by the green line on the attached drawing ENF/04, and 3) remove from the land all building materials, rubble and waste arising from carrying out the above steps.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended (the Act). 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.

Decision

1. It is directed that the enforcement notice be corrected by deleting all the words in section 3 and replacing them with *'without planning permission the erection of a fence'*. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

The Notice

2. The breach of planning control in the notice is described as the *'alteration of fence to rear garden'*. It is clear from the evidence that is before me, including the photographs and the red/green lined plan that accompanies the notice, that the breach of planning control relates more precisely to the erection of a new fence. It is clear, however, what the local planning authority meant by using the words *'alteration of a fence to rear garden'*. Indeed, there is no dispute that the originally sited fence has been altered because of its removal and that a new fence has been erected as a replacement albeit in a different place.

3. There is no suggestion from the appellant that the above breach of planning control has not occurred as a matter of fact. In other words, there is no evidence of any hidden ground (b) appeal. In the interests of precision, and without injustice being caused to any of the main parties, I shall correct the

breach of planning control by deleting all the words in section 3 of the notice and replacing them with *'without planning permission the erection of a fence'*.

Appeal on Ground (d)

4. The appeal on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.

5. The breach of planning control relates to the erection of a fence to the rear of No. 18 Pollen Road. The main issue is whether the fence was substantially completed on the site for more than four years so as to be immune from enforcement action as laid down by Section 171B(1) of the Act.

6. The appellant claims that the fence was erected on the land when he purchased No. 18 Pollen Road on 24 November 2022. He states that having consulted the previous mortgagee of the property such a fence was also on the land when that mortgagee purchased No. 18 Pollen Road on 18 February 2019. On this basis, the appellant states that the fence was substantially completed on the land for more than four years. Accordingly, he claims that the fence is therefore immune from enforcement action and hence is lawful.

7. There is, however, uncertainty about the claims made by the appellant above. On 24 April 2020, the local planning authority received a complaint stating that *'I have concern about a fence currently being put up to the rear of our house. It seems as though the house in question is extending their back garden into the communal Victorian drying area'*. This casts doubt about the appellant's claim that the breach of planning control was in place on 18 February 2019.

8. The above uncertainty is compounded in so far that that on 24 September 2020 the former owner of the site said, *'we had to adjust the location of the posts a very minimal amount to get the replacement posts in place due to an excessive amount of concrete and general building waste that had been thrown in around the posts previously'.* In addition, I afford weight to a third-party representation received as part of this appeal which states, *'the property next door (No. 16) carried out their garden extension (without planning permission) shortly after No. 18 extended their garden in April 2020'.*

9. As a matter of fact and degree, and, on the balance of probability, I consider that the breach of planning control was substantially completed in 2020. In operational development terms, the appellant's evidence is not sufficiently precise or unambiguous to demonstrate that the breach of planning control has been substantially completed on the land for at least four years so as to be immune from enforcement action. Therefore, I conclude that the ground (d) appeal fails.

Conclusion

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

D Hartley, INSPECTOR