



Appeal Decision

Site visit made on 19 January 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd JANUARY 2024

Appeal Ref: APP/R0660/C/23/3329890

Land at 8 Elm Crescent, Alderley Edge SK9 7PQ

- 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 Miss Joanne Mills against an enforcement notice issued by Cheshire East Council.
- The enforcement notice was issued on 9 August 2023.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of fencing and gates shown in the approximate position edged green on the attached plan marked 'Plan B'.
- The requirements of the notice are a) remove the fencing and gates from the land together with all resultant debris OR b) reduce the height of the fencing and gates to no higher than 1 metre in height' AND c) remove all resultant debris from the land.
- The period for compliance with the respective requirements is (a) two months, b) two months and c) two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

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

Procedural Matter

2. The National Planning Policy Framework was amended on 19 December 2023 (the Framework). However, it has not been necessary for me to seek comments from the main parties about the implications of the updated Framework. This is because there are no material changes in respect of the deemed planning application main issue below.

Reasons

Ground (d) appeal

3. The appeal made 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.

4. The appellant claims that the fence and gates were erected in November 2018 and hence are immune from enforcement action as they have been in situ for more than four years before the notice was issued. The appellant states that in 2008 she '*had partial fencing and a gate erected measuring 1.68 metres.*' The onus is on the appellant to make their appeal on legal grounds. In this case, the appellant has not provided any objective evidence to support the claim made that the fence and gates were erected in November 2018. There are for example no dated photographs, statutory declarations, Google street-view images or dated receipts for the gates/fence.
5. I find that the appellant has not proven with sufficient clarity and certainty that the fence and gates have been erected for four years. On the balance of probability, I therefore conclude that when the notice was issued enforcement action could be taken in respect of the breach of planning control. Therefore, the ground (d) appeal fails.

Ground (a) appeal and the deemed planning application

6. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the notice and the main issue is the effect of the development on the character and appearance of the area.
7. The appeal site falls within an established estate of brick built dwellinghouses arranged in a linear form around Elm Crescent. Some are terraced and some are semi-detached. Overall, there is a uniformity to the design and use of materials for each of the dwellinghouse types. This design consistency also includes the predominant use of brick built and low boundary walls (some with hedges and some without) to the partly landscaped front gardens, thereby ensuring that there is a pleasing sense of spaciousness to the front of the properties when experienced by passers-by. Collectively, the above attributes add positively and distinctively to the character and appearance of the area.
8. The gates and fence are in a prominent position. Owing to their height, position and combined length, they unacceptably detract from the otherwise more spacious and landscaped frontages that mainly exist elsewhere in the street. They appear as dominant and incongruous additions when experienced in the street-scene.
9. I therefore conclude that the gates and fence have caused very significant harm to the character and appearance of the area. They do not constitute good design and there is direct conflict with paragraph 131 of the Framework which states, '*the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve*'.
10. The appellant has referred me to other fences and gates elsewhere. I do not know the circumstances which led to these boundary treatments being erected and, in any event, they are the exception rather than the norm in the locality. Therefore, this is not a matter which outweighs the harm that I have found to the character and appearance of the area.

Other considerations

11. The appellant has commented that the fence and gates are needed to provide security and safety. The evidence is that the fence and gates would assist in

minimising symptoms associated with a health condition for an occupier of the host property. For the purposes of determining this appeal, I have assumed that the health condition is enduring and is impacting on day-to-day life and activity. Accordingly, I have considered the condition as a disability. In this regard, I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.

12. I do not doubt the reasons why the appellant erected the gates and fence. The evidence indicates that security was important, particularly when there was a dispute with neighbours in August 2020. Nonetheless, the positive weight that I afford to the health condition, and desire for improved security, is tempered by the fact that I have little evidence about whether more sensitive security options may be capable of being explored by the appellant such as the installation of CCTV, and/or the erection of a fence/gates that are of a height that do not need planning permission, and perhaps with the planting of a hedge(s) behind. It is noteworthy that the notice includes a requirement that the fence/gates could be reduced in height to 1 metre thereby reflecting a permitted development fall-back position.

Planning balance and ground (a) conclusion

13. I find that the gates and fence cause very significant harm to the character and appearance of the area. In this regard, the breach of planning control does not accord with the design, character and appearance requirements of policies SD2 and SE1 of the Cheshire East Local Plan Strategy 2017, policy GEN 1 of the Site Allocations and Development Plan Document 2022, policy AE2 of the Alderley Edge Neighbourhood Plan 2021-2031, and Chapter 12 of the Framework.
14. I consider that a refusal of planning permission is a proportionate and necessary approach to the legitimate aim of ensuring that the character and appearance of the area is reasonably safeguarded. Therefore, while I acknowledge the personal circumstances of the appellant, for the reasons outlined I conclude that these are not matters which outweigh the harm caused to the character and appearance of the area. Therefore, the ground (a) appeal fails.

Ground (f) appeal

15. The appeal made under ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.
16. The requirements of the notice give the appellant the option of either removing the fence and gates from the land, or to reduce them in height to no more than 1 metre. The latter is an option given the permitted development right fall-back position as contained within Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The purpose of the notice is therefore to either remedy the breach of planning control, or to remedy injury to amenity caused by the breach of planning control.

17. The appellant's claim under ground (f) is that the '*complete removal of the fence/gates is excessive when there are numerous properties in the surrounding area with identical/similar builds.*' The notice gives the appellant the option of not completely removing the fence/gates. Furthermore, as part of the consideration of the ground (a) appeal and the deemed planning application, I have considered the breach of planning control in the context of the character and appearance of the immediate area.
18. I conclude that the requirements of the notice are not excessive. Therefore, the ground (f) appeal fails.

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR