



Appeal Decisions

Site visit made on 16 January 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2024

Appeal A Ref: APP/H0724/C/23/3327169

Appeal B Ref: APP/H0724/C/23/3327170

15 Skelton Street, Hartlepool TS24 9JB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- Appeal A is made by Mr George Gordon and Appeal B is made by Mrs Tanja Gordon against an enforcement notice issued by Hartlepool Borough Council.
- The notice was issued on 5 July 2023.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a high timber fence at the side.
- The requirements of the notice are to:
 - (i) Reduce the height of the fence shown between positions A and B on the attached block plan so that it does not exceed 1m in height.
 - (ii) Remove any debris associated with step (i) above.
- The period for compliance with the requirements is: 3 months.
- The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld.

Formal Decisions

1. Appeal A and Appeal B are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appeals have been submitted on ground (c) alone; that those matters stated in the notice do not constitute a breach of planning control. It is not disputed that the matters stated in the notice have occurred or that no planning permission has been sought from, or granted by, the Council for the fencing.
3. Nor is it disputed that the fence, as originally erected, exceeded a height of 1 metre above ground level or that as constructed it did not exceed 2 metres in height above ground level. Although the appellants have reduced the height of the fence, it has not been done so in the manner required by the notice. Thus, whilst reduced in height for the first approximately 1 metre of its length back from Point A, the timber fence is retained at its full height beyond that distance from point A, beyond point B.
4. The ground of appeal is a legal ground and the planning merits of the fence that is the subject of the notice are not therefore before me to consider. I cannot therefore take into account matters such as instances of anti-social behaviour and fear of crime, personal circumstances, pedestrian and highway safety or its effect upon character and appearance, all of which have been raised by the appellants. In legal grounds appeals the burden of proof rests with the appellant and the standard of proof is the balance of probability.

The appeals on ground (c)

Reasons

5. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted under Article 3, Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). However, such development is not permitted by these provisions if the height of the fence where erected or constructed adjacent to a highway used by vehicular traffic would exceed 1 metre in height above ground level. The pavement is held to be part of the highway used by vehicular traffic for the purposes of this Class of the Order.
6. The notice requires the timber fence that has been erected to be reduced in height so that it does not exceed a height of 1 metre between points A and B as shown on the block plan that accompanies the notice. The distance between point A and point B is shown on the block plan to be 2 metres.
7. The word '*adjacent*' is not defined in the planning Acts. Typically, dictionary definitions of the word '*adjacent*' include '*being near or close*' to, '*adjoining*' or '*contiguous*' with. The Council consider in this instance a distance of at least 2 metres from a highway used by vehicular traffic to no longer be adjacent to that highway. It is stated by the Council, albeit without citation or example, that it is commonly accepted that '*adjacent*' is taken to be anything within 2 metres of a highway, and that this is commonly applied within the borough.
8. The appellants' case revolves around a lack of definitive legislative wording or 'policy' as to what constitutes being '*adjacent*' to a highway. By reducing the height of the first 1 metre of the fence from point A to 1 metre, the appellant believes that this is the portion of the fence which is '*adjacent*' to the highway. Thereafter, the fence steps immediately and abruptly to its higher level of in the region of 2 metres in height.
9. Boundary types are varied in their style along Skelton Street. Front boundaries at the rear edge of the pavement, running parallel to it, typically tend to be low brick walls with taller brick gate 'piers'. At 90° to the front walls, the means of enclosure marking the dividing line between neighbouring properties again vary but are typically low, typically no higher than the gate 'piers' and of timber construction of varying styles. Occasionally, higher hedges mark the boundaries between properties.
10. Whilst examples of the dictionary definition of the word '*adjacent*' are set out above, '*adjacent*' does not necessarily mean '*contiguous*' or '*abutting*' and a means of enclosure does not have to adjoin a highway to be '*adjacent*' to it. I accept that in this instance the appellants have reduced the height of the fence over a length in the region of 1 metre back from point A. However, the abrupt step up in height at that point is such that the higher portion of the fence is still sufficiently '*near or close to*' the highway to be seen in the context of the appeal property's front boundary with the highway. As such, I am satisfied that this is sufficient to constitute adjacency for the purposes of the Order. Clearly, there becomes a point at which a fence in this situation is no longer adjacent to a highway. The notice's requirements more reasonably reflect this matter, whilst the appellants' attempted resolution of the matter falls short in my judgement, for the reasons I have set out above.

11. For these reasons, the appeals on ground (c) fail.

Other Matters

12. I have noted the appellants' frustration with regard to the matter at hand. The Order provides a degree of certainty to the height of fences or other means of enclosure and whether or not an application for planning permission would be required. However, not every term is so defined and in such circumstances the fact and degree judgement of the decision maker, based upon specific site circumstances, is necessary to determine whether and to what extent a fence should be regarded as adjacent to a highway.

Conclusion

13. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

G Robbie

INSPECTOR