
Appeal Decisions

Site visit made on 5 February 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22 February 2024

Appeal Refs: APP/Z4718/C/23/3330573 and 3330574
101 Bourn View Road, Netherton, Huddersfield HD4 7LA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr and Mrs Dumigan against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 22 August 2023.
- The breach of planning control as alleged in the notice is *Without the benefit of planning permission, the construction of a high fence, exceeding 1 metre in height, adjacent to the highway.*
- The requirements of the notice are to permanently dismantle and remove the fence from the site.
- The period for compliance with the requirements is 60 days.
- The appeals are proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 ('the 1990 Act') as amended.

Summary Decisions: the appeals are dismissed and the notice is upheld.

Main Issue

1. The main issue common to both appeals is whether the steps required to be taken by the notice exceed what is necessary to remedy any breach of planning control constituted by the matters alleged in the notice.

Reasons

2. An enforcement notice may seek to remedy the alleged breach of planning control; or it may seek to remedy any injury to amenity caused by the alleged breach. Whilst these aims may not always be mutually exclusive, it is clear from the terms of the notice and from the Council's reasons for issuing it that it seeks to remedy the breach of planning control.
3. Although permitted development rights may arise to construct some fences, they would not apply to the fence here because of its height adjacent to the vehicular highway. There is no dispute about the correctness of the Council's allegation, which is that the fence as a whole has been constructed without planning permission and in breach of planning control.
4. Various mitigation measures are proposed by the appellants, and it might be that there is some merit in these, although I do not express a view. This is because they are beyond the scope of my legitimate considerations in this appeal. There having been no appeal on ground (a) seeking planning permission, my task is not to consider whether the effects of the development might be ameliorated by one or other of the appellants' proposals. It is instead

to consider whether the steps presently required by the notice exceed what is required to remedy the alleged breach of planning control.

5. The allegation is of the erection of an unauthorised fence, and the steps imposed by the notice go no further than requiring it to be dismantled and removed. I am unable to find that these steps are disproportionate to the breach, or unnecessary to remedy it. The unauthorised development could not be reversed other than by dismantling and removing the fence.
6. None of the appellants' proposals could be achieved without retaining at least part of the fence in question. That would require an application for planning permission. I do not know whether such suggestions were put before the previous Inspector determining an appeal against the refusal of planning permission last year (under reference APP/Z4718/D/23/3314584) but I would not be able to entertain them without an accompanying application to retain the fence (or part of it). However, no appeal was made on ground (a) of section 174(2) of the 1990 Act in this case.

Conclusion and Formal Decision

7. For the reasons given above I conclude that the steps required by the notice are commensurate with the aim of remedying the breach of planning control and that the appeals should be dismissed.
8. The appeals are dismissed and the enforcement notice is upheld.

Laura Renaudon

INSPECTOR