



Appeal Decision

Site visit made on 5 March 2024

by Graham Dudley BA (Hons) Arch Dip Cons AA

an Inspector appointed by the Secretary of State

Decision date: 19 March 2024

Appeal Ref: APP/G4620/C/23/3316909

29 Furnace Parade, TIPTON, DY4 9BB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Roukheela Roukheela against an enforcement notice issued by Sandwell Metropolitan Borough Council.
 - The notice was issued on 25 January 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a fence and gate to the front of the land over 1 metre in height and the construction of a fence to the rear of the land over 2 metres in height.
 - The requirements of the notice are 1. To reduce the height of the front fence and gate to 1m in height, 2. Reduce the height of the rear fence to 2m in height 3. To remove from the land all materials, debris arising from compliance with step 1 and 2 and dispose of the materials and debris at a lawful place of disposal.
 - The period for compliance with the requirements is four weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) of the Town and Country Planning Act 1990 as amended. There is no ground (a) appeal or deemed planning application.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of four weeks as the compliance period and its substitution with 3 months as the period for compliance. Subject to this variation, the enforcement notice is upheld.

Preliminary Matters

2. In forming this decision, I have had due regard to the Public Sector Equality Duty (PSED) 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. These characteristics include race and disability and I acknowledge the appellant shares these protected characteristics for the purposes of the PSED. It does not follow from the PSED that the appeal should automatically succeed, but these need to be considered.
3. In reading through the appellant's case it was apparent that there was a hidden ground (g) relating to the period for adjusting the fence heights. I have therefore added a ground (g) to the appeal.

Reasons

Ground (c)

4. Ground (c) is that those matters (if they occurred) do not constitute a breach of planning control.
5. I have sympathy with the appellant's circumstances and problems that are identified as occurring, but these are matters that should be taken up with others. It is also questioned how the Council knows that the fence has only been erected in the last 4 years. In this case the appeal is on grounds (c) and (f) only. There is no ground (d) appeal related to the length of time the fence has been in place and the Council says it has evidence that the fence is more recent. The appellant also notes in the ground (c) appeal that the fence and gate were put up in December 2022. I consider that if this were to be an issue, the appellant would have properly included a ground (d) appeal. I do not consider that this is a hidden ground. There is also no ground (a) appeal where the circumstances and planning policy can be considered.
6. The fences are clearly building operations normally carried out by a builder and would require planning permission. Permitted development rights would permit fences away from the road 2m high and by the road 1m high, but these fences and gate are clearly taller than this and therefore need planning permission. The appeal on ground (c) fails.

Ground (f)

7. Ground (f) 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.
8. In this case the requirements of the notice are clearly to remedy the breach of planning control by reducing the fence heights to that covered by permitted development. This is the simplest way to resolve the breach of control and is not excessive or unreasonable. I have considered the Equalities Act, but here it is fair and reasonable to consider what has occurred against planning law and policy. I have dealt with the appeal on this basis. The appeal on ground (f) fails.

Ground (g)

9. There was no ground (g) appeal, but the appellant argues that more time should be allowed to complete the steps. However, it would not be reasonable to extend the length of time for such matters as the daughter's health or waiting for the police or CPS; this is open ended and not enforceable. The Council notes that the fences are causing harm to the area and need to be remedied.
10. The Council also states that the appellant indicated at the beginning that it was only a temporary measure and would be removed in 2 years. That has not occurred. I accept the fence heights need to be remedied, but any time for removal must be considered from the date of the notice coming into force. The appellant needs time to arrange with a builder or other person to do the work,

and then for it to be carried out, so I consider that 3 months would be a more reasonable time period for compliance. The appeal succeeds to a limited extent on ground (g).

Graham Dudley

INSPECTOR