



Appeal Decision

Site visit made on 26 March 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2024

Appeal Ref: APP/B0230/C/23/3320684

Land at 68 Seymour Road, Luton, Bedfordshire LU1 3NW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Dmitry Ordin against an enforcement notice issued by Luton Borough Council.
 - The notice was issued on 10 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a front highway boundary wooden slatted fence in excess of one metre in height.
 - The requirements of the notice are to:
 - (i) Remove the fence including all supporting structures from the Land.
 - (ii) Remove all associated building materials and rubble and waste materials arising from compliance with step (i) above from the Land.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).
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Decision

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

The appeal on ground (f)

2. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the fence and all resulting materials to be removed, I find the purpose is to remedy the breach of planning control.
3. The appellant suggested alterations which would include removing some of the slats in the fence, leaving some to support new planting, so the remaining slats would become a trellis merely as a support for the new plants. This and arguments regarding security and safety, are matters which relate to and require a consideration of planning merits.
4. However, where there is no appeal under ground (a) there is no deemed application for planning permission, as such there can be no arguments about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose.
5. The purpose of the enforcement notice is to remedy the breach of planning control and removal of the fence is consistent with that purpose. However, the

enforcement procedure is intended to be remedial rather than punitive. Consequently, it is open to me, and I am required, to consider whether there is an obvious alternative which would overcome the planning difficulties at less cost and disruption than total removal.

6. I have considered the Council's suggestion that the requirements be varied to require the fencing to be removed from the front boundary in its entirety, and the side boundary fencing closest to the highway be reduced to one metre in height for approximately one metre in length.
7. However, in the absence of explanation, I am not certain whether such requirements would be consistent with the purpose of the enforcement notice, that is to remedy the breach of planning control. Moreover, in the absence of suggested wording, I am not certain that the requirements could be framed with sufficient precision, such that the appellant knows precisely what they must do.
8. Accordingly, since it is not excessive, in order to remedy the breach of planning control, to require the removal of the fence and resulting materials, the appeal on ground (f) fails.

Conclusion

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

Felicity Thompson

INSPECTOR