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# Appeal Decision

Site visit made on 25 April 2024

**by Laura Renaudon LLM LARTPI Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 May 2024**

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**Appeal Ref: APP/W2465/C/23/332501**  
**15 Southernhay Road, Leicester LE2 3TN**

- 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 Dr Fahreen Dhanji against an enforcement notice issued by Leicester City Council.
- The enforcement notice was issued on 5 October 2023.
- The breach of planning control as alleged in the notice is *Without planning permission, the installation of a boundary fence to front of Property.*
- The requirements of the notice are to reduce the height of the fence to 1m or to remove it; and to remove all resultant materials from the site.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

**Summary Decision: The appeal is dismissed and the enforcement notice is upheld.**

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## Preliminary Matters

1. Updates to the National Planning Policy Framework ('the Framework') made since the notice was issued are referenced in the parties' cases and so I have had no need to refer back to them.

## Main Issues

2. The two main issues raised by the Council's reasons for issuing the notice concern the effects of the fence on the character and appearance of the area, including the Stoneygate Conservation Area, and its effects on the safety of highway users including pedestrians. These are therefore the main issues for consideration in the appeal.
3. The appellant raises security as a concern and as a justification for the fence, and this is thus a further matter for consideration.
4. The property lies outside but on the boundary of the relevant conservation area.

## Reasons

*Effects on the character and appearance of the area and the Conservation Area*

5. Core Strategy policy CS3 of the Leicester City Core Strategy, adopted in July 2014, sets out that good quality design is central to the creation of attractive places, and that well designed developments should contribute positively to the character and appearance of the local environment. The historic environment should be protected and, where appropriate, enhanced. Policy CS18 reiterates

this point, saying that the Council will protect and seek opportunities to enhance the historic environment including the character and setting of designated and other heritage assets. Policy PS10 of the City's Local Plan, adopted in 2006 and with a plan period expiring in 2016, seeks to protect the amenity of residents including by taking into account the visual qualities of an area, as well as safety and security matters, when determining planning applications.

6. The Planning (Listed Buildings and Conservation Areas) Act 1990 sets out that it is desirable to preserve or enhance the character or appearance of Conservation Areas, and obliges any decision maker to pay special attention to that desirability when determining matters that may affect a Conservation Area. Here, the parties are agreed that the fence lies within the setting of the Stoneygate Conservation Area and that it results in what the Framework calls 'less than substantial harm' to the significance of that asset. The Framework goes on to require any such harm to require justification and for the decision maker to weigh such harm against the public benefits of the proposal.
7. The property in question is a detached house set back from the road to the southern side of its roughly triangular plot. In front of the house lies a driveway and parking area in front of the integral garage, with a small area laid to lawn to the south. The fence has been installed to the north of the driveway, beginning from the northern side wall of the house, coming forward to the edge of the pedestrian footway, leading north alongside the footway, then leading northwest away from it. I understand it to wrap around the whole of the property's garden (save for the driveway and southern front lawn).
8. It is around 2.5m high, consisting of close-boarded panels to around 2m with a trellis part above. The fence posts are around 2.5m high, protruding slightly above the trellis.
9. Although there are exceptions, the predominant boundary treatments in this leafy residential area are of low walls and hedges formed from yew or other close vegetation. A number of frontage trees exist, some ornamental such as cherry trees but some quite large such as beech varieties. The overall impression is one of welcoming space and openness with properties set a generous distance from each other with open frontages and private rear gardens.
10. By contrast, and noting that this is not the only exception, the fence here appears to barricade in the property, creating a sense of isolation from the remainder of the street and detracting from the general sense of openness that otherwise prevails. This results from the fence's height, location, and from its nature of being close-boarded.
11. The appellant draws my attention to other examples of high fences in the area, and I acknowledge that several do exist although few as stark as this one, with some other examples having the benefit of established vegetation surrounding them so as to soften their effects. In any event the other high fences are not so prevalent as to say that such a fence here would be in keeping with the general character of the area.
12. I therefore find the fence to conflict with the requirement of policy CS3 to contribute positively to the character and appearance of the local environment and of policy PS10 to be appropriate to the visual qualities of the area.

13. Turning to its particular effects on the Conservation Area, I find it to have some limited impact on the setting of the Conservation Area and thus to have some impact on the significance of the heritage asset, largely for the same reasons. Although not within the Conservation Area it provides an abrupt bookend to it, in place of the former vegetation and soft landscaping treatment that would have allowed some appreciation of the Conservation Area from beyond it to the south. The Council's notice does not seek to remove or alter the element of the fence that lies to the northern boundary abutting the Conservation Area, but I find that the other elements of the fence (which the Council do seek to change or remove) have some impact by themselves. Thus the fence contravenes policies CS3 and CS18 in these respects.
14. The Framework provides that harm to a heritage asset may be outweighed by public benefits of a proposal, and policy PS10 of the Local Plan provides that safety and security matters are a relevant amenity consideration. Thus I accept that improvements to the occupant's security resulting from the fence are capable of amounting to a public benefit.
15. However, it is not explained why the particular security advantages here could not be obtained in some other way, such as by a fence further away from the roadside. The appellant refers to an instance of theft at a time when there was no fence, although it is not clear how or if the absence of a fence was a contributory factor.
16. The appellant contends that reducing the fence to 1m in height will result in inadequate security and a vulnerability to vandalism and anti-social behaviour. It is unclear how realistic these concerns are; moreover it ignores the availability of permitted development rights (or to make a planning application) to construct a fence of a greater height that is not adjacent to the highway. Therefore I do not find that the public or security benefits of the existing fence are sufficient to outweigh the harm and identified policy conflicts.

#### *Effects on highway safety*

17. Saved policy AM10 of the City Local Plan adopted in 2006 requires an assessment of the impact of development on pedestrians and people with limited mobility. Their needs should be successfully incorporated into the design of new development and they should be protected from other highway users.
18. The issue arising here is that a driver exiting the property would have little visibility to the north because of the fence that is built up to the footway, and that pedestrians might be put at risk as a result. I do not understand the Council to have sought the views of the local highway authority when determining to issue the enforcement notice for this reason, and the extent to which (if at all) the fence prevents an acceptable visibility splay is not explained. Whilst the fence is likely to limit visibility to some extent, it replaces previous vegetation that will itself have obstructed visibility to some degree. The property lies in a spacious residential area that appeared to me to be lightly trafficked by pedestrians. In the absence of sufficient justification from the Council I am unable to find that the presence of the fence provides an unacceptable risk to highway users including pedestrians so would not uphold the notice for this reason.

### *Other matters*

19. No appeal is raised on ground (f) which is to say that the steps required to be taken by the notice exceed what is reasonably necessary to remedy the breach of planning control or the harm caused, but nonetheless the appellant has made a number of suggestions as to how the development might be compromised in order to make it acceptable.
20. The first suggestion involves removing the trellises and allowing vegetation to establish itself so as to soften the appearance of the fence. The second suggestion is to paint the fence a more appropriate colour. Whilst both of these suggestions would go some way to mitigating the harm caused by the fence, I do not consider that either (or both together) would be sufficient so as to overcome the harm I have identified, because even at 2m high without the trellises the fence would still be distinctly out of character with the area.
21. The third suggestion is to move the fence inwards, and to allow the growth of hedgerows in front. In effect, this amounts to a different development that would fall beyond the scope of my considerations in this appeal. In any event I should need to be satisfied as to the effects on the nearby protected trees and no information is given about that.

### **Conclusion**

22. In conclusion therefore I am not satisfied that this particular fence (or the suggested alternatives given by the appellant) is necessary to provide the security measures the appellant seeks to establish. Therefore I am not satisfied that the harm caused by the fence is outweighed by any other considerations. As the fence is contrary to the provisions of the development plan for the area, for the reasons I have given the appeal will be dismissed and the enforcement notice upheld.

### **Formal Decision**

23. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Laura Renaudon*

INSPECTOR