
Appeal Decision

Site visit made on 24 June 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2024

Appeal Ref: APP/Z4718/C/23/3333595

41 Latham Lane, Gomersal, Cleckheaton BD19 4AL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Miss Brianna Wressell against an enforcement notice issued by Kirklees Metropolitan Council.
- The notice was issued on 13 October 2023.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the erection of a fence and gate at the front and side boundaries of the property.
- The requirements of the notice are to:
 - a) Dismantle and remove the fence and gate, including supporting posts and fittings.
- The period for compliance with the requirement is:
 - 1) To complete steps 5(a) – 60 days after the notice takes effect

Total time for compliance – 60 days after the Notice takes effect.

- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 (as amended) (the Act).

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

Formal Decision

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

Preliminary Matters

2. There is no appeal under ground (a). Thus, the planning merits and arguments set out in the appellant's submissions on grounds (f) and (g), including matters such as visual impact concerns, comparison with other means of enclosure nearby and matters of privacy, security and highway safety, which would otherwise have been considered under ground (a), are not for consideration under the grounds of this appeal.

The appeal on ground (f)

3. An appeal under ground (f) may be brought if it is felt 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. In this instance, the notice requires the dismantling and removal of the fence and gate, including supporting posts and fittings. This is consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a) of the Act, not to remedy injury to amenity.
4. The appellant, in seeking to address visual impact concerns, has suggested modifications could be made to the fence to mitigate the alleged impact. These

modifications include painting the fence and gates in a darker colour; modifying the top element of the fence to create a 'trellis' style top; insertion of stone piers to break up the fence; and a reduction in height and stepping of panels in specific locations.

5. However, these measures are consistent with seeking to remedy injury to amenity, rather than to remedy the breach of planning control. The purpose of the notice is to remedy the breach of planning control and, in the absence of an appeal under ground (a), these 'lesser steps' would not do so. Thus, the notice's requirements do not exceed what is necessary to remedy the breach of planning control set out and are proportionate thereto. The appeal under ground (f) must therefore fail.
6. Furthermore, any assessment of harm should, the appellant argues, be based on a comparison with the additional height of the fence over and above that which might otherwise have fallen within the scope of 'permitted development'¹. Setting aside the matter of the visual impact referred to, I am not persuaded how or if a reduction in the height of the fence and gate in line with this suggestion would necessarily address the breach of planning control itself. No detail has been provided as to how the appellant might seek to achieve this and it is not clear how the provisions of the Order would be exercised to achieve the appellant's stated aim. This does not therefore alter my conclusion with regard to the appeal under ground (f).

The appeal on ground (g)

7. An appeal on ground (g) may be made if it is felt that the time period specified to comply with the notice's requirements falls short of what should reasonably be allowed. The appellant seeks an extended period of 180 days within which to comply with the notice's requirement to dismantle and remove the fence and gate.
8. In the reasons for issuing the notice, it is stated that the appeal site lies directly adjacent to a vehicular access serving a residential development and Latham Farm. The fence intrudes into the southerly visibility splay from this access and it is for highway safety reasons that the Council defend the notice's 60-day period and seek to resist the longer compliance period sought by the appellant.
9. Whilst I understand and sympathise with the appellant's reasons for seeking a longer compliance period, 180 days seems to me to be an excessive length of time for the removal of a relatively modest (in structural and construction terms) structure. Particularly so where, as a consequence of the fence's height and position relative to the adjacent vehicular access and junction, highway safety is concerned.
10. I accept that securing the services of a contractor, even if only for the relatively modest purpose of removing the fence and gates, may not necessarily be the work of a moment. However, it has not been explained why the removal of the fence and gates and supporting posts and fittings would require the services of a contractor and could not be carried out by someone with, for example, only more limited 'DIY' abilities. Whilst the appellant's future choices regarding replacement boundary treatment may require time, expense

¹ By virtue of Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order)

and expertise to implement, I am not persuaded that the notice's requirements necessarily do so. Nor do the notice's requirements directly require the appellant to take such steps.

11. Thus, for the reasons set out, I am not persuaded that the period specified in the notice to carry out its requirements falls short of what should reasonably be allowed. The appeal on ground (g) therefore fails.

Conclusion

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

G Robbie

INSPECTOR