
Appeal Decision

Site visit made on 21 October 2024

by John Whalley

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30th October 2024

Appeal ref: APP/D0121/C/23/3333527

69A Bristol Road Lower, Weston-super-Mare BS23 2TW

- The appeal is made by Mr Vasilis Kimitri under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by North Somerset Council.
- The notice was issued on 17 October 2023; reference 22/00308/UAW.
- The breach of planning control was: Without planning permission, the erection of a fence, (shown on the land outlined in red and the location of the fence shown in blue on the plan attached to the notice).
- The requirement of the notice is: Remove the fence (shown as edged in blue on the plan attached to the notice) and all resulting materials from the Land (edged red on the plan attached to the notice).
- The period for compliance with the requirement is 6 months.
- The appeal was made on grounds (c), (d), (f) and (g) – s.174(2) of the Act.

Summary of decision: The enforcement notice is quashed.

Costs application

1. The Appellant, Mr Vasilis Kimitri, made an application for an award of costs against North Somerset Council. That application is considered in a separate decision.

Appeal fence

2. The large house, No. 69A Bristol Road Lower, is at the corner of that road and Eastcombe Road within the Hillside Character Area and the Grove and Montpelier [conservation] Sub Area, in the Great Weston Conservation Area.
3. The enforcement notice the subject of this appeal acts against an approximately 2m high timber post and vertical timber panel fence erected immediately behind a 1m or so high stone boundary wall to the front garden of No. 69A and the edge of the footways to the 2 roads. Most of the original timber panels were replaced following a storm and tree fall in 2022. The new fence panelling is the subject of the enforcement notice.

The ground (c) appeal

4. An appeal on ground (c) asserts that those matters alleged in the enforcement notice do not constitute a breach of planning control. The Appellant, Mr Kimitri, said the new fencing amounted to lawful works of maintenance and repair.

5. I saw that along the Bristol Road Lower and Eastcombe Road frontages to No. 69A new vertical boarded panels have replaced most of the earlier horizontal boarded timber panels, (seen on a May 2012 Google photo for example). The notice plan shows the new fencing panel sections to be removed, omitting, however, several old horizontal board panels covered by hedging at the corner of the 2 roads and one panel at each end of the No. 69A boundary.
6. Mr Kimitri said a storm in 2022 caused a tree in the garden of No. 69A to fall across Bristol Road Lower. As photos taken shortly afterwards show, the tree had split, almost half falling across the road, closing it to traffic before being cut up and removed. The tree fell onto the timber panel fence immediately behind the 1m or so stone boundary wall to Bristol Road Lower, wrecking a section of fencing. Panels beyond repair had been replaced using the same materials, to the same height and positioned within the existing timber posts. Mr Kimitri said that showed the work had been of a maintenance and repair nature. It was not a new replacement fence. Undamaged old fence panels were retained in 3 places. The old fence posts were reused.
7. The new timber fence panels appeared to be of the same width and spacing as before. That new panels were fitted utilising the original posts was apparent from rot deterioration shown on many of the posts, showing they had been in place for years rather than months. It is an arguable case that the extent of the new panels is such that the work may have amounted to the erection of a new fence – as put forward by the Council. However, the fallen tree obviously damaged or destroyed a number of the Bristol Road Lower panels. Their replacement by new panelling in that situation was clearly repair work. In the event, new panelling was much more extensive than immediately necessary repairs. But new panels were fixed to existing posts in the same position. That suggests it more reasonable to conclude the replacement of old timber panels amounted to works of upgrading maintenance with some repairs. There was no time at which the entire fence had been demolished or removed, to be replaced by an entirely new fence.
8. The Council said the fence had been erected so close to the wall next to the highway that there was no discernible gap between the fence and the wall. Together, the fence and wall formed one functional boundary treatment, next to the highway. I agree with that assessment. That further confirms my view that the replacement of most of the timber panels did not amount to the removal and re-erection of the entire boundary.
9. The appeal on ground (c) succeeds. I do not need to go on to consider the appeals made on grounds (d), (f) and (g).

FORMAL DECISION

10. The enforcement notice is quashed.

John Whalley

INSPECTOR