



Appeal Decision

Site visit made on 3 January 2025

by D Hartley BA (Hons), MTP, MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 JANUARY 2025

Appeal Ref: APP/W4705/C/24/3348383

2 Black Dyke View, Queensbury, Bradford, BD13 1AS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Isaac Bizimana against an enforcement notice issued by City of Bradford Metropolitan District Council.
 - The notice was issued on 30 May 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of fences and gates to the front of the property.
 - The requirements of the notice are to i. demolish the unauthorised fences and gates to the front of the property, and ii. remove all resulting materials from the land.
 - The period for compliance with the requirements is one calendar month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decision

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

Preliminary Matter

2. The National Planning Policy Framework was revised in December 2024 (the 2024 Framework). This replaces the previous version of the National Planning Policy Framework published in December 2023. The 2024 Framework has not materially changed in terms of design considerations. Given the ground (a) appeal main issue, it has not therefore been necessary for me to seek comments from the main parties about the implications of the 2024 Framework.

Ground (d) appeal

3. An appeal made on ground (d) of section 174(2) of the Act is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
4. The claim made by the appellant under ground (d) is that he attempted to submit a regularising planning application for the breach of planning control, but it was rejected because the drawings were not to scale. He says that he would like to be given the opportunity to submit the scaled drawings prepared

by an architect. This is not a ground (d) appeal claim. In any event, I have been able to consider the fences and gates in the absence of drawings as they are already on the land. I was able to see and assess them as part of my site visit.

5. The appellant also alleges that he was told by a representative of the local planning authority that subject to paying a planning application fee '*it was possible to get the permission*'. This is not a ground (d) appeal matter, and, in any event, I have considered the deemed planning application below. On the evidence that is before me, I cannot be certain if the above comment was made by a representative of the local planning authority but, in any event, I have determined the deemed planning application on its individual planning merits and have exercised my own professional judgement.
6. There is no evidence from the appellant, or any other party, to demonstrate that the fencing and gates had been substantially completed for the relevant period of time as stipulated in section 171(B)(1) of the Act. On the balance of probability, I do not therefore find that there is any clear or compelling evidence to support a view that the fences and gates are immune from enforcement action owing to the passage of time. Therefore, the ground (d) appeal fails.

Ground (a) appeal and the deemed planning application

Main Issue

7. An appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reason for issuing the notice and the main issue is the effect of the breach of planning control on the character and appearance of the area.

Reasons

8. The black metal fences and gates have been erected around the front garden of No. 2 Black Dyke View which is a detached stone built dwellinghouse on a corner plot within a modern housing estate. There is a pleasing consistency to the design of the properties in this estate including the use of stone elevations and paths, dark coloured garage doors/front doors, brick pavements for driveways and parts of the roads, and open and landscaped front amenity spaces. While there are some steps or low walls in some areas to account for land level changes, overall, and, in the main, there is a noticeable absence of walls, fences, or railings enclosing the front of the dwellinghouses on the estate and, in conjunction with the other identified attributes above, this ensures that there is a consistent and distinctive sense of openness and space to the front of each property when seen in the street-scene as a whole.
9. In the context of the above, and, owing to the position, extent and height of the fences and gates, I find that they have departed unacceptably from the consistency afforded to the pattern of development to the front of the dwellinghouses on this part of the estate. The fences and gates are positioned in a prominent position being on a corner plot and are experienced by passers-by as being dominant and out of place. Overall, they fail to assimilate well into the street-scene and have a jarring visual impact when seen against the other

front amenity spaces which are more open and where there is a noticeable absence of means of enclosure.

10. I therefore conclude that the breach of planning control has had a significantly adverse impact on the character and appearance of the area. Consequently, the development does not accord with the design, character, and appearance requirements of policies DS1 and DS3 of the Bradford Core Strategy Development Plan Document 2017, and chapter 12 of the 2024 Framework.

Other considerations

11. The appellant has commented that the fences and gates are needed to prevent litter being thrown into his garden from children and/or those under the influence of alcohol. He also states that he has had to remove cat faeces from his property as some cats were using his front garden/porch to sleep at night. The appellant states that since the fences and gates were erected, no litter has been thrown into the front garden and cats no longer come onto the land.
12. I have no reason to doubt what the appellant says about some of the issues that were occurring in his front garden prior to the fences and gates being erected. However, the evidence is not clear about the extent and frequency of such issues, or indeed whether the appellant has considered other options to deal with the issues, such as for example the provision of camera-based security systems and/or the use of ultrasonic cat repellent type systems. Nonetheless, and, in any event, the reason for erecting the fences and gates needs to be balanced against the significant harm that has been caused to the character and appearance of the area.
13. The appellant asserts that there are other fences in the area that are higher than one metre in height. There may be some fences in the local area which exceed one metre in height. However, the prevailing character of Black Dyke View in terms of the front gardens/amenity spaces is one of openness and where there is a noticeable and distinctive absence of means of enclosure.

Ground (a) appeal planning balance and conclusion

14. Significant harm has been caused to the character and appearance of the area from the breach of planning control. While I acknowledge the reasons why the appellant has erected the fences and gates, I find that there is potential for exploring other options which would achieve the same desired outcomes and without likely causing the same harm to the character and appearance of the area. In any event, the harm caused from the breach of planning control to the character and appearance of the area is significant. In this case, it outweighs the other considerations identified above and is a matter of overriding concern.
15. I therefore conclude that the development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Overall Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission

on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

D Hartley

INSPECTOR