



Appeal Decisions

Site visit made on 17 March 2025

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 April 2025

Appeals Ref: Appeal A: APP/N4720/C/24/3352379 & Appeal B: 3352380 72 Derwent Avenue, Garforth, Leeds LS25 1HS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr David Senior (Appeal A) and Mrs Lindsay Senior (Appeal B) against an enforcement notice issued by Leeds City Council.
- The notice was issued on 2 September 2024.
- The breach of planning control as alleged in the notice is without planning permission the erection of boundary fencing exceeding one metre in height, located adjacent to a highway used by vehicular traffic.
- The requirements of the notice are to either:
Step 1: Dismantle and remove all the unauthorised fencing, or
Step 2: Reduce the unauthorised fencing fronting the vehicular highway of Derwent Avenue and Ninelands Lane (as shown in blue on the attached plan) to no higher than one metre above ground level.
- The period for compliance with the requirements is: Three months.
- The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).

Decisions

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the word "all" and the insertion of the words "as shown in blue on the attached plan" in section 5 of the notice, so that Step 1 says "Dismantle and remove the unauthorised fencing as shown in blue on the attached plan, or"
2. Subject to the correction above, the appeals are dismissed and the enforcement notice is upheld.

Ground (c)

3. An appeal on ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. In an appeal under ground (c), the burden of proof is firmly on the appellant to make their case, to the civil standard, which is the balance of probabilities. It is not disputed that the fencing which has been erected exceeds 1m in height. The main thrust of the appellants' case is that the fencing along Ninelands Lane is not adjacent to the highway or footpath that adjoins the highway and is set back some several metres.
4. Part 2, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosures subject to certain limitations: A.1.(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development,

(ii) ...exceed 1 metre above ground level; (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level; (c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater'; or (d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

5. The appellants state they have received advice from the Council's enforcement department that, if a boundary treatment is extended without an increase in its overall height, then planning permission would not be required. The correspondence relates to an enforcement investigation concerning another property. It is suggested that because an electric gate simply extended the existing boundary treatment without increasing the height of the original fencing then it would not require planning permission.
6. I do not have full details of the case that the officer is referring to and so it is not clear that it is comparable to the appeal site or whether the officer's conclusion accords with the GPDO. While the GPDO would permit the maintenance, improvement or alteration of an existing fence where it would not exceed its former height, the works which have been carried out at the appeal site do not constitute the maintenance, improvement or alteration of a fence, rather they constitute the erection of new fencing.

Whether adjacent to a highway

7. Both Derwent Avenue and Ninelands Lane are highways which are used by vehicular traffic. The appellants' appeal under ground (c) is made with respect to the three fence panels situated along Ninelands Lane closest to Derwent Avenue. The appellants state that they accept that the fence panels along the perimeter of their property fronting Derwent Avenue are adjacent to the highway and are to be lowered to 1m above ground level.
8. The Council has provided me with drawings which are stated to be approved under reference 17/06773/FU, which show a 2m high fence running along the side boundary with Ninelands Lane, up to the front elevation of the dwellinghouse. From the evidence, therefore, it seems much of the fence has been granted planning permission. Indeed, the enforcement notice makes it clear the Council's concern is the fencing to the front (understood to mean forward of the principal elevation) of the property.
9. The notice, however, relates to the entire plot and therefore includes fencing along Ninelands Lane which is clearly adjacent to a highway, but which has previously been granted planning permission. From the evidence, it seems the extent of fencing which has not been granted planning permission is the fencing shown in blue on the attached plan, which has been erected to the front of the property (which runs along Derwent Avenue) and the three panels referred to by the appellants, between the appeal property and Ninelands Lane.
10. I raised this matter with the parties and queried whether (notwithstanding the appellants' arguments regarding the three panels referred to above) the notice should be corrected to reflect the fact that planning permission has already been

granted¹. The Council has confirmed that it agrees that Step 1 of the requirements should be varied² to require the recipient of the notice to 'Dismantle and remove the unauthorised fencing as shown in blue on the attached plan.'

11. I shall therefore focus my attention on the extent of fencing shown in blue on the attached plan (since the appeal under ground (c) succeeds on the basis that planning permission has been granted for the remainder of the fencing.).
12. Given the above, this appeal will turn on whether the fencing, as shown in blue on the enforcement plan, is adjacent to the highway. The term 'adjacent to a highway' is not defined in the GPDO. The Oxford English Dictionary defines 'adjacent' as 'next to or very near something else; neighbouring; boarding; contiguous; adjoining.' What constitutes 'adjacent to a highway' is a matter of fact and degree, depending on the circumstances of the case.
13. The fencing which has been erected wraps around the front and side of the property, physically and visually delineating between the property and its curtilage and the public domain. A footpath runs between the fence and the highway. Between the fence and Ninelands Lane, along with footpaths, there is also a modest semi-circle of land laid with grass and some decorative plants which runs between the highway and the fencing.
14. At the point the fence along Ninelands Lane meets the fencing along Derwent Avenue (which, as set out above, the appellants accept is adjacent to the highway) it is a similar distance from Derwent Avenue. Despite being perpendicular to Derwent Avenue, the fencing at this point is, in my view, adjacent to Derwent Avenue.
15. Although there is a grassed area with footpaths either side between the fence panels and the highway, the fence along Ninelands Lane is perceived as a boundary fence separating the land from the highway. Consequently, I consider it to be adjacent to Ninelands Lane.
16. Moreover, it is likely that the fencing was erected in a single operation and forming one enclosure with the fencing along Derwent Avenue, taking the entire operation outside the permission granted by the GPDO. As a matter of fact and degree, I find that the fencing which has been erected is adjacent to a highway used by vehicular traffic. It is not permitted by the GPDO and so planning permission is required.
17. The appellants suggest that the fencing does not impede views of vehicular traffic and have drawn my attention to fencing and other boundary treatments erected in the locality³. However, my consideration under ground (c) is limited to whether the matters alleged constitute a breach of planning control. I cannot consider the planning merits of the fencing.
18. As planning permission has already been granted for part of the fence, I consider that the appeal under ground (c) should succeed in part, and I shall correct the requirements so that Step 1 only requires the fence as shown in blue on the attached plan to be removed. The appeals under ground (c) succeed to this extent.

¹ The appellants have confirmed that planning permission was granted under reference 17/06773/FU for a 2m high fence running along the side boundary with Ninelands Lane.

² Notwithstanding I consider this would be a correction.

³ Along Ninelands Lane and Derwent Avenue, including at No. 70 Derwent Avenue.

Conclusion

19. I conclude on the balance of probabilities that the construction of fencing, with the exception of the fencing as shown in blue on the enforcement notice plan, does not represent a breach of planning control by reason of a grant of express planning permission. The appeals under ground (c) therefore succeed in part and I shall correct the notice to reflect this success, prior to upholding it.

M Savage

INSPECTOR