The Planning Inspectorate

Appeal Decision

Site visit made on 8 June 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 16 July 2021

Appeal Ref: APP/M2325/C/21/3267033
Parles Cottage, Bank Lane, Warton, Preston PR4 1TB

- 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 Mr Jason Finnerty against an enforcement notice issued by Fylde Borough Council.
- The enforcement notice was issued on 26 November 2020.
- The breach of planning control as alleged in the notice is the erection of a boundary fence of a solid and closed design the height of which exceeds one metre above ground level has been erected to the boundary of the Land adjacent to Bank Lane in the position marked A-B as shown on the attached plan (the Fence).
- The requirements of the notice are to remove the fence adjacent to Bank Lane in the position marked A-B on the attached plan or reduce its height so that it no longer exceeds one metre above ground level.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

The Enforcement Notice

1. Some of the matters raised by the appellant challenge the validity of the notice. In particular, under his case for the appeal on ground (b) he contends that the plan attached to the notice is inaccurate and therefore the notice should be considered to be invalid. In terms of invalidity, there will be those defects that are capable of being corrected under the Inspector's powers in s176(1)(a) of the Act and those that are too fundamental to be corrected without causing injustice and lead to the notice being quashed.

2. Regulation 4(c) of The Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 (ENAR) states that an enforcement notice shall state the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. In paragraph 2, the notice sets out the precise boundaries of the land to which the notice relates and there is also a detailed description of the breach and the location of the development in paragraph 3 under the matters which appear to constitute a breach of planning control.

3. The plan attached to the notice shows the boundaries of the land in question and also identified the position of the boundary fence to which it relates. I understand the appellant's argument that the location of the letters 'A' and 'B' may not be precisely accurate but in my judgement the notice taken as a whole is sufficiently clear for the appellant to be able to identify what he has done

wrong and also what he must do to remedy it, which is the appropriate test derived from case law[1]. Consequently, I find that the notice is not invalid.

4. I have noted that with respect to the appeal on ground (a) the Council contends that no fee has been received. However, I have seen clear evidence that the correct fee was paid to the Council on 25 January 2021.

The appeal on ground (b)

5. The ground of appeal is that the breach of control alleged in the enforcement notice has not occurred. In order to succeed on this ground it would need to be demonstrated that a boundary fence as alleged had not been erected on the land. A fence has quite clearly been erected on the land as described in the enforcement notice as a matter of fact and thus the appeal on ground (b) fails.

The appeal on ground (c)

6. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The erection of a fence comprises operational development within the meaning of s55 of the Act for which, s57 indicates, planning permission is required. In this case the appellant argues that the fence is not directly fronting onto the highway and a 2 metre high fence could be erected under permitted development rights.

7. Schedule 2, Part 2 Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) relates to minor operations comprising gates, fence, walls etc. Permitted development is the erection of a gate, fence, wall or other means of enclosure. The GPDO goes on to state that development is not permitted if the height of any fence erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1 metre above ground level.

8. Three is no statutory definition of what constitutes a highway, but it is generally accepted that a highway is a way over which members of the public have the right to pass and repass. Therefore, it is clear to me that Bank Lane is a highway. In addition, the appellant states that there is no formal definition of what is meant by immediately fronting, being adjacent , or being next to a highway. The courts have held that the word 'adjacent' does not necessarily mean that a fence has to be actually abutting or touching the highway. Indeed, a wall or fence can be set back from the highway but still be adjacent to it as a matter of fact and degree provided that the means of enclosure is clearly there to define the boundary of the property concerned from the highway and is perceived to do so.

9. In this case there is a narrow grass verge between the edge of the tarmac road and the fence in question. In my judgement this is part of the highway in that it is part of the area which may be used by the public to pass and repass if need be. On this basis and as a matter of fact and degree I therefore consider that the fence which is the alleged breach of planning control is adjacent to the highway. In addition, the means of enclosure (the fence) has been erected for the purposes of defining the boundary of Parles Cottage from the highway and in my judgement is perceived to do so.

[1] Miller Mead v MHLG [1963] 2 WLR 225

10. Consequently, the fence at a height in excess of 1 metre above ground level does not benefit from permitted development rights set out in the GPDO and requires planning permission, which has not been granted

11. The appeal on ground (c) fails.

The appeal on ground (a)

12. The ground of appeal is that planning permission should be granted. The appeal site is located in the Green Belt and it is agreed between the main parties that the development is inappropriate development in the Green Belt. Therefore, the main issues are:

    i. the effect of the development on the openness of the Green Belt and on the character and appearance of the area; and

    ii. whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

13. The appeal site contains a dwelling positioned close to Bank Lane and a wooden fence has been erected along the property's boundary with Bank Lane to a height in excess of 1 metre. The appellant acknowledges that the development is inappropriate development in the Green Belt and is therefore harmful by definition. It is also argued that the erection of the fence above 1 metre in height has had no more than a negligible impact on either the purposes of the land being in the Green Belt or the essential characteristics of the Green Belt and that the greater the harm to the principle character of the Green Belt and to the purposes of the Green Belt, the greater the level of very special circumstances required to be demonstrated.

14. However; the term 'building' refers to any structure or erection and therefore includes fences. They do not fall within the list of exclusions in the Framework. Therefore, when judged against the wording of national policy the proposal is inappropriate development in the Green Belt. Due to its scale the development does not substantially prejudice any of the purposes of including land in the Green Belt but, according to the Framework, inappropriate development is harmful by definition.

15. In that there is a solid, man-made feature which did not previously exist, the openness of the area has been reduced to a limited degree, particularly when considering the fall-back position whereby a fence of a height of up to 1 metre could be erected in this position without requiring planning permission. The appellant argues that the site is on the fringe of the Green Belt and the impact of the fence is less than if it was on a large open site in the middle of the Green Belt. That may be the case, but nevertheless, the site is in the Green Belt and is clearly visible from along Bank Lane.

16. The appeal site is in an area where there is a mix of open land and some residential development and I would therefore describe its character as being mixed with a range of different residential frontages in the locality including some fences and hedges. As a consequence of its height, solid appearance, materiality, length and position, the fence in question is a prominent local feature which contrasts with other boundaries and development in the area. Because the development is not compatible with its location there is a conflict with Policy HD7 of the Fylde Local Plan to 2032 Adopted 22 October 2018 (the

LP) although the harm to the character and appearance of the area is not of a great magnitude.

17. The appellant has put forward a number of considerations which he considers amount to very special circumstances, even though he openly admits that these are "modest at best". It is my understanding that BAe contractors undertook works to some tall trees in the appellant's garden due to interference being caused to the radar operations at nearby BAe Warton. Following these works the garden was left open and exposed and the fence the subject of the enforcement notice was erected to replace the previous level of security. The height of the fence prevents children and dogs from climbing over it. However, other steps could have been taken to ensure they are kept safe in the garden of the appeal property. The fence also serves as a security barrier to prevent possible intruders but a hedge or other more suitable landscape feature could serve that purpose equally well.

18. The appellant contends that local residents are supportive of the development because it has resulted in significant benefits in noise reduction and improvements to road safety from there being less trees overhanging the road. Other than comments from local residents there is no detailed evidence that the fence has resulted in noise attenuation, but it is a potential limited positive side effect. The benefit of there being less damage to caravans as a result of the trees having been removed is of very limited benefit in this case. Therefore, overall, these factors are of limited weight.

19. In summary, the development is inappropriate development in the Green Belt. Substantial weight has to be attached to any harm to the Green Belt. The fence results in limited reduction to the openness of the Green Belt and marginally harms the character and appearance of the area. Even when taken together the other considerations reviewed above do not clearly outweigh these objections. Consequently, no special circumstances exist and the development is contrary to Policy GD2 of the LP. Therefore, for the reasons given the appeal on ground (a) should fail.

The appeal on ground (f)

20. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or the remedy injury to amenity (s173(4)(b)). The notice requires the removal of the fence or reduce its height to no more than 1 metre above ground level and therefore in this case it is clearly to either remedy the breach or remedy injury to amenity.

21. I am mindful that enforcement action is intended to be remedial and not punitive and with a ground (a) appeal it may be possible to grant planning permission for part of the development. The appellant has suggested that a reasonable compromise would be to reduce the height of the fence by a modest amount of, say 0.5 metres, in order to limit injury to amenity and would provide a reasonable level of security which, the appellant contends, constitutes very special circumstances which are required in a case such as this. It is further suggested that further measures such as painting, staining or landscaping could mitigate any harm identified.

22. However, as set out above, the development is inappropriate development in the Green Belt which is harmful by definition. Reducing the height of the fence would not overcome this Green Belt objection, but it may somewhat reduce the extent of harm to the openness of the Green Belt and the effect on the character and appearance of the area. However, these reductions would be only marginal in this case. I can also see that leaving part of the fence above a height of 1 metre in place would retain a level of safety and security, but as I have previously commented, these objectives could be achieved by other means. In addition, the appellant's suggestion may have a marginal effect in terms of noise mitigation, but that is of limited weight in any case.

23. Taking account of the potential benefits of reducing the height of the fence it is clear that these would not clearly outweigh the objections to the development with respect to the Green Belt and the character and appearance of the area. Therefore, the appeal on ground (f) fails because lesser steps would not achieve the objectives of the notice.

The appeal on ground (g)

24. The ground of appeal is that the time given to comply with the requirements is too short. The three months given would be sufficient to remove the fence or reduce its height. The 12 month compliance period suggested by the appellant would be excessive having regard to the continuing harm caused by the fence. However, given the ongoing Covid-19 pandemic restrictions and associated potential delays in carrying out the works to the property, I consider the period should be extended to enable the appellant adequate opportunity to comply with the requirements. In this respect I consider five months would strike the appropriate balance and would not place a disproportionate burden on the appellant. To this limited extent the appeal on ground (g) succeeds.

Formal Decision

25. I direct that the enforcement notice is varied by the deletion from paragraph 6 of the words "three months" and the substitution therefore of the words "five months" as the time for compliance with the requirements.

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

A A Phillips

INSPECTOR