



Appeal Decisions

Site visit made on 19 November 2019

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: **13 January 2020**

Appeal A Ref: APP/K2420/C/19/3221767

25 Warwick Gardens, Hinckley, Leicestershire LE10 1SD

- 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 Richard Seabrook against an enforcement notice issued by Hinckley & Bosworth Borough Council.
 - The enforcement notice was issued on 24 January 2019.
 - The breach of planning control alleged in the notice is : 'Without planning permission the erection of a 2 metre high fence and associated gate adjacent to a highway at 25 Warwick Gardens, Hinckley, Leicestershire shown marked in a blue line between points A and B on the attached 'Enforcement Plan' and for identification purposes on the attached photograph marked 'Appendix (A).'
 - The requirements of the notice are: Remove the fence and gate shown marked in a blue line between the points marked A and B on the attached 'Enforcement Plan' or lower them to no more than 1 metre in height above ground level.
 - The period for compliance with the requirements is 30 days.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. The case is exempt from the prescribed fees, so the appeal on ground a and the application is for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
-

Appeal B Ref: APP/K2420/W/19/3221766

25 Warwick Gardens, Hinckley, Leicestershire LE10 1SD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Richard Seabrook against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 18/01151/HOU dated 10 November 2018 was refused by notice dated 24 January 2019.
 - The development proposed is retrospective planning request for erecting 2 metre high fence to replace conifers (approx. 3.5m high) and wooden gate adjoining existing fencing.
-

Decisions

Appeal A

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

Appeal B

2. The appeal is dismissed.

Procedural Matters

3. Although the application form for planning permission refers to a wooden gate, the plans show the new gate which is the same colourbond steel as the new fence. However, as I am dismissing the appeal, I have not amended the description.
4. For Appeal A, the ground (a) appeal is that planning permission should be granted for the matters stated in the notice. Since the Appeal B is against refusal of planning permission for the identical development, the considerations are the same and I have treated both cases together.

Main Issue

5. I consider the main issue for both appeals to be the effect of the new fence and gate on the character and appearance of the area.

Reasons

6. The appeal property is part of a residential estate and Warwick Gardens is a cul de sac made up of largely two storey dwellings with a mix of detached and semi-detached dwellings. Dwellings are generally set back from the highway with off street parking and boundary treatments on Warwick Gardens are largely a mix of open front gardens with parking, soft landscaping and limited wooden fencing.
7. The appeal dwelling is on a corner location so that there are two boundaries which are adjacent to the highway at the front and side. No 12 Portland Drive shares a side boundary with the appeal site although the side boundary of No 12 is made up of hedging rather than fencing. The appellant originally had a row of conifer trees on this side boundary but has now replaced the trees with the appeal fence and a gate which are approximately 2 metres high and made of brown colourbond steel. Although the conifers that were removed were approximately 3.5 metres tall, the softer, natural appearance of the trees is not comparable to the appeal fence with its more industrial appearance.
8. To the other side of the new gate is a section of wooden fencing which finishes at the side of the dwelling to enclose the garden. The appeal site therefore currently has two contrasting types of fencing to its boundaries of differing heights as the appeal fence is taller.
9. The appellant states that there has been a wooden fence at the front and side of the house for a number of years and the new fence in replacing the trees continues the previous fence line. The appellant's intention is to remove the old wooden fence and have a more open plan frontage when a new garage is built for which the appellant has planning permission. Whilst that may be the case, I do have to assess the development as it stands and there is currently a mismatch of fencing of different materials and height.
10. The Council objects to the new section of fencing with the matching gate on the basis that its appearance is uncharacteristic in a residential area and would more commonly be seen in an industrial setting. The section of colourbond fence with the gate in the same materials does in my view have a utilitarian appearance that is incongruous compared to the prevailing pattern of softer boundary treatments and lower wooden fencing in the surrounding area. I

therefore do consider that the development does harm the character and appearance of the area.

Other Matters

11. Whilst the appellant has produced a series of photographs which show wooden fences throughout the estate, the examples given relate to wooden fencing commonly found on residential estates rather than colourbond steel. Whilst examples are given of colourbond fencing being used elsewhere in Hinckley and Barwell, the appeal fence has to be assessed with regard to its particular context.
12. Although the appellant has referred to adding potted trees to the garden to soften the look of the fence, any planting is likely to take some time to mature and potted trees are therefore unlikely to address the appearance issue.
13. I note that there have been no objections to the planning application and that there was one comment in favour of the application. Whilst the fencing has a 25 year guarantee and is intended to be lower maintenance, that does not justify the retention of the fence. The appellant has referred to the height of the fence being needed to keep dogs in the garden. The appellant is also concerned about security and privacy for his home and children at the rear of his property. However, alternative security measures and boundary treatments such as hedging have not been referred to. Whilst the appellant has concerns, it is rarely the case that personal circumstances can outweigh the grant of a permanent planning permission that runs with the land.
14. Although not a ground of appeal, in his final comments, the appellant has referred to the difficulties of complying with a time scale of 30 days before Christmas whilst keeping the garden secure. Whilst, that period has passed, the Council does have the power to extend the compliance period under Section 173A(1)(b) of the 1990 Act if the appellant can demonstrate good reasons for any delay.

Conclusion

15. I conclude on the main issue in Appeals A and B that the development is therefore contrary to Policy DM10 of the adopted Site Allocations and Development Policies Development Plan Document Submission (2016)(Site Allocations Policy) which states that planning permission will be only granted for development where it enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features. Although the Council has also referred to Policy DM1 of the Site Allocations Policy as it refers to the presumption in favour of sustainable development, I find it to be less relevant.
16. For the reasons given, I conclude that Appeal A fails and I shall refuse planning permission on the deemed application and the enforcement notice is upheld. Appeal B is dismissed.

E. Griffin

INSPECTOR