



Appeal Decisions

Site visit made on 19 June 2018

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2018

Appeal A: APP/V2255/C/17/3182682

Appeal B: APP/V2255/C/17/3182683

11 Hustlings Drive, Eastchurch, Sheerness ME12 4JX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Michael Crossman and Appeal B is made by Mrs Jenifer Crossman against an enforcement notice issued by Swale Borough Council.
- The enforcement notice was issued on 11 August 2017.
- The breach of planning control as alleged in the notice is 'Without planning permission, the construction of fencing, the approximate position of which is highlighted on the plan, which in the opinion of the Council would require planning permission.
- The requirements of the notice are:
 - (i) Remove the fencing
 - (ii) Remove any materials or debris etc from the Land caused in complying with the requirements of 5 (i) above.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (e) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld.

Appeal C: APP/V2255/W/17/3180228

11 Hustlings Drive, Eastchurch, Sheerness ME12 4JX

- 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 Michael Crossman against the decision of Swale Borough Council.
- The application Ref: 17/501661/FULL, dated 23 March 2017, was refused by notice dated 30 June 2017.
- The development proposed is fence 1.650 high between No 11 and 13 Hustlings Drive on the property (land) belonging to No 11 Hustlings Drive. The fence is 1.650 high on No 13 side and 1.500 on No 11 side and 5.400 long in front of building house line and 5.600 from edge of road (highway).

Summary of Decision: The appeal is dismissed.

The Notice

1. The appellant alleges that the Notice is flawed due to the lack of clarity of the plan which accompanies it. The plan has a section of yellow highlighting to indicate the approximate location of the fence attacked by the Notice. This yellow highlighting is in the same approximate location as that identified by the

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Appeal Decisions APP/V2255/C/17/3182682, 3182683 and 3180228

appellant of Appeal A in the planning application for the retention of the fence the subject of Appeal C. As such, I consider that the plan shows adequately the approximate location of the fence the subject of the Notice.

Appeals A and B on ground (e)

2. The ground of appeal is that the enforcement notice was not correctly served as required by section 172 of the Act. Section 172 requires a copy of the Notice to be served on the owner and on the occupier of the land to which it relates and to any other person having an interest in the land.
3. There is no substantiated evidence that the Notice was not served correctly. Both Mr and Mrs Crossman have submitted appeals against the Notice. There is no evidence of any other party that the appellants consider should have been served with the Notice but was not. Therefore on the evidence before me the appeals on ground (e) fail.

Appeals A and B on ground (c)

4. This ground of appeal is that the matters alleged in the Notice do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. Under a ground (c) appeal the onus of proof is on the appellants to show that there has not been a breach of planning control. In this case the appellants make two submissions. Firstly, the appellants state that the fence as erected does not constitute development under section 55 of the Act. Secondly, they state that Condition 5 of planning permission SW/06/0900 does not prevent the erection of the fence the subject of the Notice and thus it would be permitted development (PD) in accordance with Part 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).
5. The Notice alleges that the fence is operational development which is the first limb of the definition of development under section 55 of the Act. Operational development is the carrying out of building, engineering or other operations in on over or under land. A building is defined by section 336 of the Act as including any structure or erection and any part of a building, but not plant or machinery comprised within a building.
6. In *Cardiff Rating Authority v Guest Keen Baldwins Iron and Steel Co Ltd* [1949] 1QB 385 three primary factors were identified as decisive of what was a building (a) that it was a size to be constructed on site, as opposed to being brought onto the site (b) permanence (c) physical attachment. No one factor is decisive. The fence that has been erected consists of posts and panels. There is no substantiated evidence to demonstrate that the posts and panels were not brought onto the land and then erected, it is not a permanent structure or that it is not physically attached to the ground. On the basis of the evidence before, me I consider that the fence is a building and thus is operational development.
7. No 11 is part of a development that was granted planning permission under SW/06/0900. Condition No 5 of that planning permission states:
 'Notwithstanding the provisions of Article 3 and Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, no fence, wall, gate or other means of enclosure may be erected nearer to any part of the highway which bounds the curtilage than any part of the house or in advance

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2

Appeal Decisions APP/V2255/C/17/3182682, 3182683 and 3180228

of the front wall line of any house (excluding any garage element or detached garage) hereby approved.'

8. The appellant considers that the condition prevents only the erection of fencing which is adjacent to any part of the highway AND bounds a curtilage and that the second part of the condition, 'in advance of the front wall of the house', can only mean the erection of fencing before the front wall of the house was erected.
9. The Council has imposed the condition to take away permitted development rights for fencing within the front garden area of the dwellings granted planning permission under reference SW/06/0900. The term 'in advance' is defined in the Oxford Compact English Dictionary as 'ahead in place or time'. 'Ahead' is defined, in the same publication, as 'further forward in space or time'. With those definitions in mind, I find that the condition reads clearly to prevent the erection of any fence, wall, gate or other means of enclosure forward of the front wall of any house i.e. the front garden area in front of the nearest elevation of any dwelling facing towards the road. I further find that the condition is clear and unambiguous on a plain reading of the condition as a whole.
10. I therefore find that planning permission was required for the fence the subject of the Notice and that no planning permission had been granted. The appeal on ground (c) fails.

Conclusions on Appeals A and C

11. For the reasons given above I conclude that Appeals A and B should not succeed. I shall therefore uphold the enforcement notice.

Appeal B

Main Issues

12. The main issue is the effect of the development on the character and appearance of the street scene and the residential area.

Reasons

13. The appeal site is part of a residential estate that has an estate road with cul-de-sacs leading from that. The front garden areas are predominantly open without fencing as a result of the Condition 5 of the original planning permission. While a number of properties have means of enclosure in their front gardens these are exceptions to the predominant open form within front gardens within the estate. Moreover, it is not clear whether those referred to have received planning permission or are immune from enforcement action.
14. Planning permission was granted, at appeal in 2016 for small retaining walls for brick planters to front garden – two areas at the appeal property. The Inspector in that case found that although at the front of the property they were relatively low features which he found not to be intrusive in the street scene. He went on to comment that the vegetation in the planters provides verdure which softens the impact of the masonry. The fencing the subject of the current appeal is different in height, location and materials to the low level planters and walls the subject of the previous appeal.

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3

Appeal Decisions APP/V2255/C/17/3182682, 3182683 and 3180228

15. The height and form of the appeal fence is such that it is clearly read as a barrier between two plots, Nos 11 and 13. The fence removes the openness of the front garden areas of both properties. I appreciate that due to the location of No 11, set back near the end of the cul-de-sac, there are limited views from the estate road and for part of the way down the cul-de-sac of the fence. However, the reduction in the openness of the front garden areas of Nos 11 and 13 does significantly change the character of the estate as it was planned as an open plan front garden form. Incremental change such as the fence the subject of this appeal, results in an erosion of the openness of the individual plot and the estate as a whole. Thus, in my view, the fence significantly harms the character and appearance of the street scene and the residential area as a whole.
16. The development is therefore contrary to Policies CP4, DM14 and DM16 of the Swale Borough Local Plan Bearing Fruits 2031 (adopted July 2017) which require development to be of a good design, well sited and of a scale, design, appearance and detail that is sympathetic and appropriate to the location and maintain or enhance the character of the street scene.
17. For the reasons given above I conclude that Appeal B should be dismissed.

Formal Decisions

Appeals A and B

18. The appeals are dismissed and the enforcement notice is upheld.

Appeal C

19. The appeal is dismissed.

Hilda Higenbottam

Inspector