

Item 12

DEVELOPMENT CONTROL COMMITTEE

1st June 2007

Report of the Director of Neighbourhood Services

RECENT PLANNING APPEAL DECISION

The following planning appeal decisions are reported for the information purposes:

APPEAL REFERENCE NO. APP/M1330/C/06/2032404 & 7

LOCATION: Land at 1 Parkdale Spennymoor

APPEAL DESCRIPTION:

The appeal was made against an enforcement notice alleging:

'The unauthorised erection of a fence, resulting in the enclosure of open space.'

The steps specified in the notice required:

'The removal of the fence in its entirety.'

The appeal against the enforcement notice was made on ground (c) that:

'That there has not been a breach of planning control.'

An Enforcement Notice appeal also gives rise to a 'deemed' planning application but as the prescribed fees had not been paid the Inspector did not consider the planning merits of the case.

The appeal was dealt under the written representations procedure.

APPEAL DECISION

In the Inspector's decision letter dated 17 May 2007, a copy of which is attached to this report, the appeal was dismissed and the enforcement notice upheld.

ANALYSIS OF THE APPEAL DECISION

The Inspector in dismissing the appeal and upholding the enforcement notice concluded that:

'Aside from the condition removing permitted development rights, the fencing referred to in the notice was a breach of planning control.'

In arriving at this conclusion the inspector addressed the appellant's submission that he had been told clearly by a Council officer that planning permission was not required and that he had acted on this basis. The Inspector however was not convinced that an 'oral' response gave rise to a 'legitimate expectation' that planning permission was not required. According to the Inspector a binding determination could only be established through a formal determination.

CONCLUSION

The decision of the Inspector is an important one as it supports the approach that the planning department has adopted in dealing with requests regarding the need for planning. All requests are dealt with in writing together with a caveat that a binding decision, as to whether or not planning permission is required, can only be established through a formal application determine.

APPEAL REFERENCE NO. APP/M1330/C/06/2026163

LOCATION: Land at 13 Eden Road, Newton Aycliffe,

APPEAL DESCRIPTION:

The appeal was made against an enforcement notice alleging:

'The unauthorised erection of a fence.'

The steps specified in the notice required:

'The removal of the fence in its entirety.'

The appeal against the enforcement notice was made on ground **(F)** that:

The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.

An Enforcement Notice appeal also gives rise to a 'deemed' planning application but as the prescribed fees had not been paid the Inspector did not consider the planning merits of the case.

The appeal was dealt under the written representations procedure.

APPEAL DECISION

In the Inspector's decision letter dated 2 April 2007, a copy of which is attached to this report, the appeal was dismissed and the enforcement notice upheld.

ANALYSIS OF THE APPEAL DECISION

The Inspector in dismissing the appeal and upholding the enforcement notice concluded that:

'The fence could not be modified in such a way as to reduce its impact significantly' and as the 'appellant had not suggested an alternative measure that would overcome the adverse impact of the fence' concluded that the 'appeal must fail'.

CONCLUSION

The Inspector in arriving at his decision clearly considered that steps required in the notice were not excessive.



Appeal Decisions

Site visit made on 8 May 2007

by Alan Upward BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date: 17 May 2007

Appeals Ref: APP/M1330/C/06/2032404 & 7
1 Parkdale, Spennymoor, Co Durham DL16 6XU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Mrs G Tolley against an enforcement notice issued by Sedgfield Borough Council.
- The Council's reference is AP/2007/001/EN.
- The notice was issued on 3rd November 2006.
- The breach of planning control as alleged in the notice is **the unauthorised erection of a fence, resulting in the enclosure of open space at land adjacent to 1 Parkdale, Spennymoor, County Durham, DL16 6XU.**
- The requirements of the notice are to **remove in its entirety the fence that has resulted in the enclosure of open space at land adjacent to 1 Parkdale, Spennymoor, County Durham, DL16 6XU (shown edged red on the attached Ordnance Survey extract No.NZ2534).**
- The period for compliance with the requirements is 28 days.
- Both appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the applications for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.

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

Ground (c) appeals

1. 1 Parkdale is a modern dwelling on a corner site at the entrance to a short cul-de-sac of similar properties and within an extensive area of modern residential development. The plan attached to the enforcement notice defines a rectangular parcel of ground between the limit of former enclosed garden and the footway edge of Carr Lane. Close boarded fencing of about 1.8 metres height has been erected along 2 of its sides with a tapering fence of similar design along the cul-de-sac building line connecting with the corner of the bungalow. Photographs showing the situation shortly before issue of the enforcement notice appear to indicate a full 1.8 metre high fence along the north-western site boundary and connecting with a brick wall fronting Parkdale.
2. The Appellants argued that this land was included within their ownership at the property, and therefore could not have the status of "open space". As owners of the land they could enclose it with fencing. They indicated that they had been told clearly that planning permission was not required for a fence of less than 2 m height to a rear garden.
3. Their account of a discussion with a Council officer does not generate a legitimate expectation that planning permission had not been required for the works as now carried out. The request appears to have been oral, and in general terms. They could not have acted directly in reliance upon any verbal reply. There had been no document setting out the proposed works and no response in writing. Moreover, the judgement in *R. v East Sussex CC ex parte Reprotech (Pebsham) Ltd 2002 (HOL 28.02.02)* established that a binding determination of the question could not bypass the formal lawfulness provisions of S192 of the 1990 Act for the lodging of an application.
4. The allegation and notice requirements make reference both to the fence and the "enclosure of open space". The notice is, however, expressly not alleging an unauthorised change of use of land, and is clearly directed at the operational development of construction of the fence within the period of 4 years preceding issue of the notice. Bearing in mind the stated reasons for issue of the notice, the Council might have chosen to allege unauthorised use of the "amenity open

space". This has not, however, been done. Although the wording refers to the "enclosure" effect of the fence, the allegation relates expressly to the fencing works.

5. Parkdale was developed in pursuance of a planning permission granted in 1989 for the erection of 4 bungalows. The appeal site forms part of this site. That planning permission had included a condition 2 expressly removing rights of permitted development in the then operative 1988 General Development Order relating to "walls or fences or other means of enclosure". Its import was carried forward into the equivalent provisions of the 1995 T& CP (General Permitted Development) Order 1995. On this basis the erection of this and other fences at the site would require express planning permission. Planning permission was not obtained for the fencing now being challenged, and there was therefore a breach of planning control. The ground (c) appeals are therefore bound to fail.
6. In addition to this, the permitted development right for fences set out in what is now Part 2 Class A of the 1995 GPDO Schedule excludes situations where exceeding one metre in height above ground level adjacent to a highway used by vehicular traffic. The land involved in the works is predominantly to the side and rear of the bungalow reaching to a screen fence sited about 250mm from the surfaced footway which appears to be part of the highway used by vehicular traffic. Such a degree of separation would clearly fall within the meaning of adjacent to the highway. Although, as now altered, the sections of fence connecting with the area formerly enclosed are progressively further from Carr Lane, much of this would also in my view reasonably fall within the meaning of adjacent to the highway. Aside from the condition removing permitted development rights, the fencing referred to in the notice was a breach of planning control.
7. For these various reasons the ground (c) appeals should fail, and the notice will be upheld.

Formal Decision

8. I dismiss the appeals and uphold the enforcement notice.

Alan Upward

INSPECTOR



Appeal Decision

Site visit made on 2 April 2007

by **Michael Hurley** BA DipTP MRTPI

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date
17 Apr. 07

Appeal Ref: APP/M1330/C/06/2026163

13 Eden Road, Newton Aycliffe, County Durham, DL5 5QA

- 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 Andrew Spencer Clarke against an enforcement notice issued by the Sedgefield Borough Council.
- The Council's reference is AP/2006/0013/EN.
- The notice was issued on 6 September 2006.
- The breach of planning control alleged in the notice is the unauthorised erection of a fence.
- The requirement of the notice is to remove in its entirety the fence that has enclosed the curtilage of 13 Eden Road, Newton Aycliffe, DL5 5QA.
- The period for compliance with the requirement is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(f) of the 1990 Act.

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

Procedural Matter

1. The fence which is the subject of this appeal encloses the garden in front of No 13 Eden Road, a 2-storey house at the end of a residential terrace. The property has no back garden. The appellant indicates that the fence was erected at some time after April 2005, for privacy, security and safety reasons; and he argues that there are similar fences elsewhere in the area. However, as no fee has been paid, the deemed planning application for the retention of the fence (for which provision is made in section 177(5) of the 1990 Act) has now lapsed. In the circumstances, it is not within my remit to consider whether planning permission should be granted for the retention of the fence.

Reasons

2. The only issue that arises in this appeal is whether the requirement to remove the fence in its entirety is excessive, or whether any lesser step would overcome the objection to this structure. The close-boarded fence is more than a metre high. It stands atop a low brick retaining wall, which runs along the back edge of the footway in Eden Road. The top of the fence is about 2.2m above the surface of the footway. The adjoining houses in this terrace have unenclosed front gardens, which are similarly raised above the level of the highway behind low retaining walls. The Council argue that the fence is an incongruous, discordant and intrusive element in the street scene.
3. Although the appeal is made on the grounds set out in section 174(2)(f) of the 1990 Act, the appellant has not suggested any alternative measure that would overcome the adverse effect of the fence on the appearance of Eden Road. Policy D1 of the Sedgefield Borough Local Plan requires that development should take account of the site's relationship to adjacent land uses; and that attention should be given to boundary treatment to create a sense of place. I do not consider that the fence could be modified

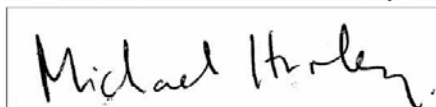
in such a way as to reduce its impact significantly. In the circumstances, I conclude that the appeal must fail.

Other Matters

4. I have taken account of all the other matters raised, including the appellant's evidence that his front garden was previously enclosed, in part by a hedge, and in part by fencing that was in an unsafe condition. However, I do not find any of these factors to be sufficient to outweigh the considerations that have led me to my decision.

Formal Decision

5. For the above reasons, I hereby dismiss the appeal and uphold the enforcement notice.

A rectangular box containing a handwritten signature in black ink. The signature appears to read "Michael H. O'Leary".

Inspector