



Appeal Decision

Site visit made on 15 October 2010

by **Keith Turner** LLB(Hons) DipArch(Dist)
RIBA MRTPI MCIArb

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

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Decision date:
26 October 2010

Appeal Ref: APP/H0738/C/10/2131448

26 Rimswell Road, Fairfield, Stockton-on-Tees TS19 7LJ

- 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 Mrs Jacqueline Pinniger against an enforcement notice issued by Stockton-on-Tees Borough Council.
- The Council's reference is 10/00023/ENF.
- The notice was issued on 21 May 2010.
- The breach of planning control as alleged in the notice is the erection of a 1.98 metre high close boarded boundary fence to the side and rear of the property.
- The requirements of the notice are:
 - (i) Reduce the height of the rear and side boundary fence to a maximum height of 1 metre from ground level between points A to B, points B to C and points C to D, as indicated on the attached plan marked plan B ("Plan B").
 - (ii) Remove from the Land all the resultant debris/materials associated with complying with point (i).
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a) and the Deemed Application

2. The fence which is the subject of this appeal encloses the side and rear gardens of 26 Rimswell Road. It is some 1.9m high and, following the provisions of the GPDO, it requires planning permission where it lies adjacent to the highway¹. Some 23m of the fence runs adjacent to Fairwell Road abutting the footway. In addition, the Council have determined that a 2m long return at each end can also be regarded as being adjacent to the highway and, in this case, I consider that to be a reasonable interpretation of the legislation.
3. The reasons for issuing the enforcement notice refer to Policy CS3 of the Council's Core Strategy which, in paragraph 8, requires all development to be designed to make a positive contribution to the local area by, amongst other things, responding positively to local character. The surroundings to the appeal site comprise a residential area, the dwellings having gardens generally to the

¹ Class A in Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended)

front and rear. The appeal premises, being situated on a corner, also have a quite expansive side garden and this is adjacent to Fairwell Road. A common characteristic of this and surrounding streets is that the boundaries fronting on to them comprise low walls or fences. This results in the street scene possessing an open and attractive character. I note that both the Council and the Inspector in a previous appeal reached a similar conclusion.

4. The fence which is the subject of the enforcement notice is about twice the height of other nearby front boundary structures. It is therefore not in keeping with its surroundings in this respect. It presents a very strong visual barrier to the surroundings of a type which is alien to the open character of the area. It is also extensive, being some 23m long fronting Fairwell Road. It is, therefore, a prominent feature in the streetscape. This prominence is exacerbated by the fact that the appeal site lies on a corner and the fence is more extensively visible within its surroundings. For these reasons I find the fence to be harmful to the character and appearance of the surroundings and so it is contrary to the aims of Policy CS3.
5. The Appellant states that the fence was erected to provide privacy for her garden and security for her children when playing within it. However, it is generally acknowledged that, in suburban development, front gardens are often less secure and less private because, amongst other things, they are adjacent to streets and, also, planning legislation controls the height of fences and walls in those locations. The corner location of the appeal site does result in the dwelling having a longer boundary with adjacent streets. However, much of this bounds a side garden.
6. The Council have advised the Appellant that part of the garden could be enclosed to provide the degree of privacy and security she requires. This could be achieved by, for example, enclosing only the rear garden to a line extending from the flank wall of the house or somewhere similar. Being set some way back from the road, there would be less impact upon the general street scene and a high fence would appear less incongruous with the wider surroundings.
7. Given that there may be alternatives which could achieve the Appellant's aspirations, the desire for privacy and security do not outweigh the harm to the surroundings caused by the fence in its present form. The opportunity for alternative solutions also means that the requirements of the Notice are not disproportionate in terms of human rights legislation. They also provide a means of accommodating the recommendations of the Crime Prevention Officer.
8. The Appellant has referred to a number of other similar fences adjacent to highways in the area. I noted one front boundary at 2 Welldale Crescent, which is visible from the appeal site. That comprised timber fence panels set between brick piers and it was about 2m high. This too occupies a corner position and is therefore prominent. However, I have no information about the circumstances of that development and therefore I cannot assume that it represents an appropriate precedent. Other fences referred to are further away and do not, therefore, have any material impact upon the street setting of the appeal site. Furthermore, I have no information pertaining to their circumstances either. Whilst the Council must adopt a consistent approach to particular forms of development within the same or similar context, in the

absence of such information I must treat this case solely on its own merits. I find the development harmful to the appearance and character of the surroundings and the material considerations put forward do not outweigh that harm. Accordingly, I conclude that planning permission should not be granted for its retention.

Ground (f)

9. To succeed under this ground of appeal it is necessary to demonstrate that the requirements of the Notice exceed what is necessary to remedy the breach of planning control or to remedy any injury to amenity caused by the breach. The Notice requires the fence to be reduced in height to that which would constitute permitted development under the terms of the GPDO. This would be the minimum steps to actually remedy the breach of planning control. However, the Appellant has suggested that the injury to amenity, namely the harm to the character and appearance of the surroundings would be ameliorated by the planting which has already been undertaken.
10. Hedging has been planted behind the fence and the vertical fence boards have been cut at intervals to permit the planting to be passed through to the side facing the street. The Appellant contends that this would soften the visual impact of the structure and diminish any harm it may cause. The planting has already reached a height of about 1m in places. However, it has little effect upon the overall appearance of the fence as yet. It does not, therefore, remedy the injury to amenity at present, nor, in my judgement, would it be likely to do so for some considerable time, if ever. The density of any hedge would be constrained by the limitation of passing through holes in the fence. Furthermore, if the hedge were to die back, fail, or be removed, the fence would remain. This is why screening of a development which is otherwise acceptable, does not necessarily render it acceptable.
11. Even if the hedge were to grow and, as the Appellant suggests, the fence was then lowered to 1m high, this would entail granting planning permission and imposing a condition requiring the lowering of the fence in due course. I agree with the Council that this would not be appropriate. First, it would entail granting planning permission for development which is inherently unacceptable for the reasons given above and, in any event, it would very probably be impracticable to extricate and lower the fence which would have a hedge growing through it.
12. For the above reasons I find that the requirements of the Notice are not excessive and provide the only means of remedying the breach of planning control and the only practicable means of remedying the injury to amenity caused by the development. Accordingly, the appeal under Ground (f) fails.

Ground (g)

13. The Appellant contends that within 18 months the hedge which has been planted should achieve a height which would maintain her privacy and security. Consequently, she suggests that the period for compliance should be extended to permit this. However, this would result in unacceptable development remaining for a significant period. Given the prominence of the fence, its harm to the surroundings, and the opportunities for alternative means of achieving privacy and security, I consider that the development should not be permitted

to remain any longer than is necessary for the requirements to be practicably complied with. I see no reason to disagree with the Council's view that 3 months would suffice for the works to be organised and implemented. Accordingly, the appeal under Ground (g) fails.

Keith Turner

