



Appeal Decisions

Site visit made on 18 May 2021

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

an Inspector appointed by the Secretary of State

Decision date: 07 June 2021

Appeal A: APP/U2370/C/21/3269312

89 Green Drive, Thornton-Cleveleys, Lancashire FY5 1JE

- 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 Robert Wilson against an enforcement notice issued by Wyre Borough Council.
- The enforcement notice was issued on 18 January 2021.
- The breach of planning control as alleged in the notice is the erection of a wooden boundary fence on top of existing boundary wall to height exceeding one metre adjacent to highway used by vehicular traffic along the eastern boundary of the land (adjacent to Green Drive), along the north eastern boundary of the land (adjacent to Green Drive/Westbourne Road), along the northern boundary of the land (adjacent to Westbourne Road) and along the western boundary of the land (adjacent to The Bay) in the approximate location shown blue on the plan..
- The requirements of the notice are:
 1. Remove the wooden boundary fence described in the Notice from the eastern boundary of the land, from the north-eastern boundary of the land, from the western boundary of the land and from the eastern boundary of the land in its entirety (including but not by way of limitation all boards and supporting fence posts); and
 2. Remove all materials and debris resulting from the works described at 1 from the land and repair any damage to the northern, north eastern, western and eastern boundary wall that has been occasioned by the erection and removal of the aforesaid wooden fence.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (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.

Appeal B: APP/U2370/D/21/3269307

89 Green Drive, Thornton-Cleveleys, Lancashire FY5 1JE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Robert Wilson against the decision of Wyre Borough Council.
- The application Ref: 20/01278/LAWE, dated 14 December 2020, was refused by notice dated 12 February 2021.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is retention of a 1.9 metre high fence.

Summary of Decision: The appeal is dismissed.

Appeal C: APP/U2370/D/20/3264907

89 Green Drive, Thornton-Cleveleys, Lancashire FY5 1JE

- 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 Robert Wilson against the decision of Wyre Borough Council.
- The application Ref: 20/00791/FUL, dated 25 August 2020, was refused by notice dated 13 November 2020.
- The development proposed is a 1.9 metre high fence.

Summary of Decision: The appeal is dismissed.

Procedural Matter

1. With respect to Appeal C I have taken the description of the development from the Council's decision notice rather than the one used on the original application form since it more accurately and succinctly describes the development before me.

Appeal A on ground (d) and Appeal B

2. Appeal A on ground (d) is that at the date when the notice was issued, no enforcement action could be taken. In order to succeed it would be necessary to show that the wooden boundary fence had been substantially completed four years before the notice was issued. In support of this ground the appellant has stated that the appeal on ground (d) applies to only two sections of the boundary fence – along the western boundary (adjacent to The Bay) and a section of the northern boundary (adjacent to Westbourne Road).
3. With respect to the Appeal B the main issue is whether the Council's decision to refuse to issue a LDC for the retention of a 1.9 metre high fence was well-founded. This turns on whether the fence had been substantially completed four years before the date of the application.
4. When dealing with an appeal on ground (d) and a LDC, the burden of proof is on the appellant and the standard of proof is the balance of probabilities. Following the judgement of *Gabbitas*¹ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed. Under s171B (1) of the Act, no enforcement action may be taken at the end of the period of four years beginning with the date of a breach of planning control consisting of operational development
5. With respect to both of these appeals the appellant contends that the respective sections of fence have been in situ for a period of more than four years. In support of his case the appellant has submitted an image from a Facebook post which he contends shows the relevant sections of fence. Although blurred and unclear, it appears to show a date of 20 May 2013. In addition, with respect to Appeal B, a consultation response from Lancashire County Council Highways dated 23 October 2020 with respect to planning application reference 20/00791 has been submitted. This states that the

¹ *Gabbitas v SSE & Newham LBC* [1985] JPL 630

height of the fence at the driveway on Westbourne Road has been in situ for a number of years with no reported issues to the Highways Department.

6. The photographic evidence submitted is not at all clear and, although it does appear to show some kind of boundary fence, there is insufficient evidence that it is the fence in question. In addition, the Highways response is vague and does not provide a precise date but just a general indication that a fence has been in situ for a number of years. It is unclear whether this refers to the sections of fence the subject of these appeals nor whether they have been in situ for the relevant period. Consequently, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development and subsequent decision to take enforcement action were well-founded and Appeal A on ground (d) and Appeal B should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal C

Main Issue

7. The main issue is the effect on the character and appearance of the area. The appeal site is a residential property situated in a predominantly residential area of Thornton-Cleveleys. It occupies a prominent corner plot adjacent to the junction of Westbourne Road and Green Drive. To the rear of the property is The Bay which is a highway providing access to the rear of properties along Green Drive and Rossall Promenade.
8. The main residential area in the locality is relatively open with wide roads, pavements and relatively low boundary treatments, including mainly masonry walls. Therefore, it has a relatively open spacious high quality residential environment. The Bay has a very different character, being narrower and more enclosed by boundaries of different types and materials on both sides.
9. The fence in question has been constructed on the original relatively low boundary wall. The fence has resulted in the boundary around the site being higher than others in the locality, including those along Westbourne Road, East Drive and most along the Bay. As a consequence of the relatively open surroundings the fence is highly visually prominent and is at odds with its surroundings, constituting an incongruous and uncharacteristic feature. It detracts from the attractive open and spacious residential surroundings. I do not dispute that boundary treatments along The Bay are varied with respect to height and materials, but the fence in question is nonetheless highly visible from the nearby residential streets.
10. My attention has been drawn to other examples of boundary treatments in the area, including some that are taller than most others. However, I do not know the circumstances of those other cases including whether they benefit from planning permission or the circumstances that existed if they were approved. In any case, I have determined the current appeal on its own merits and in the light of the most up to date policies and circumstances.
11. The appellant also argues that the height is due to the overlooking nature of neighbouring properties and to offer some privacy and security. I have taken these matters into account but they do not override the harm that I have identified with respect to the character and appearance of the area.

12. Therefore, I conclude that the development is harmful to the character and appearance of the area and conflicts with Policy CDMP3 of the Wyre Local Plan 2011-2031 February 2019, Design Note 1 of Extending Your Home Supplementary Planning Document Adopted November 2007 and the National Planning Policy Framework. Among other objectives these state that all development will be required to be of a high standard of design and appropriate to the end use. Development should be designed to respect or enhance the character of the area and make a positive contribution to an attractive and coherent townscape.

Appeal A on Ground (f)

13. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purpose of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s174(4)(a)) or to remedy injury to amenity (s174(4)(b)). Since the notice requires the removal of the wooden boundary fence in its entirety, the purpose is clearly to remedy the breach. Leaving any part of it in place would not achieve that purpose. In this respect, the appeal on ground (f) fails.

14. The second requirement of the notice is that all materials and debris arising from the works described in the first requirement should be removed from the land and damage to the boundary wall should be repaired. The appellant contends that the debris and damage do not in themselves constitute breaches of planning control and the requirement is not needed in order to remedy the breach. Case law² has established that an enforcement notice cannot impose a more onerous requirement than to restore the land to its previous condition prior to the breach taking place. The second requirement in this case is part and parcel of the Council's requirement to restore the land and, therefore, leaving debris on site would not achieve the purpose of the enforcement notice, nor would leaving the boundary wall in a potential state of disrepair following the removal of the wooden fence. Consequently, , in this respect the appeal on ground (f) fails.

Appeal A on Ground (g)

15. The ground of appeal is that the time to given to comply with the requirements is too short. The three moth period given would be sufficient to remove the wooden fence and remove all materials and debris resulting from the removal and to repair any damage to the boundary resulting from the works. The appellant argues that lockdown restrictions associated with Covid-19 pandemic result in there being a level of uncertainty with regard to when the works could be carried out by a suitable contractor. It is suggested that a more suitable period would be within three months of the date that lockdown restrictions in England are lifted.

16. In these particular circumstances I consider the period should be increased to enable the appellants to remedy the breach in accordance with the requirements and in this respect, I consider four months would not place a disproportionate burden on the appellant. To this limited extent the appeal on ground (g) succeeds.

² Bath CC v SSE & Grosvenor Hotel (Bath) Ltd [1983] JPL 937

Formal Decisions

Appeal A

17. I hereby direct that the enforcement notice should be varied by the deletion from paragraph 6 of the words "three months" and the substitution therefor of the words "four months" as the time for compliance with the requirements.
18. Subject to this variation the enforcement notice is upheld.

Appeal B

19. The appeal is dismissed.

Appeal C

20. The appeal is dismissed.

A A Phillips

INSPECTOR