The Planning Inspectorate

Appeal Decisions

Site visit made on 26 October 2010

by Stuart M Reid D Arch (Hons) RIBA

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

Decision date: 22 November 2010

Two appeals at 9 Westbrooke, WORTHING BN11 1RE

- The appeals are made by Mr Angus McCully against Worthing Borough Council.

Appeal A: APP/M3835/C/10/2132035

- The appeal is made under section 174 of the *Town and Country Planning Act 1990* as amended by the *Planning and Compensation Act 1991* against an enforcement notice.
- The Council's reference is E/09/0350/WORKS.
- The notice was issued on 29 June 2010.
- The breach of planning control as alleged in the notice is the erection of a fence in excess of 1 metre in height above ground level and adjacent to a highway used by vehicular traffic. The approximate position of which is shown for identification purposes only, in blue on the plan attached to the enforcement notice *(sic)*.
- The requirements of the notice are:
  a) To permanently remove all fencing above the boundary wall fronting Westbrooke and Richmond Road shown in the approximate position marked blue on the plan attached to the enforcement notice.

  and
  b) To remove from the Land, all materials and debris resulting from compliance with a) above.
- The period for compliance with the requirements is 1 month.
- 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. Since the development is exempt from the payment of fees, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

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

Appeal B: APP/M3835/A/10/2132030

- The appeal is made under section 78 of the *Town and Country Planning Act 1990* against a refusal to grant planning permission.
- The application Ref WB/10/0076/FULL, dated 31 December 2010, was refused by notice dated 20 April 2010.
- The development is Repair to existing fence around perimeter of property.

Summary of Decision: The appeal is dismissed.

The appeal on ground (a), the deemed planning application, and the section 78 appeal

1. Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Main Issue

2. I consider that the main issue in these appeals is the effect that the fence has on the character or appearance of the Richmond Road Conservation Area.

Reasons

3. As the appeal building is in a conservation area, I am required to take account of section 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended which states that, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area, which is reflected in Policy BE1 in the *Worthing Local Plan*. Relevant national policy is in Planning Policy Statement 5: *Planning for the Historic Environment*.

4. The appeal property is a distinguished villa on a corner plot, with a very attractive flint and brick perimeter wall to the 2 roads. The dwelling and the wall are very prominent in the street scene, and contribute in an important way to both the character and the appearance of the Conservation Area. The fence which is the subject of the enforcement notice and the section 78 appeal has been erected above the wall, and it, too, is therefore prominent in the Conservation Area.

5. The appellant states that the fence panels are identical to those which existed when the house was bought by the present occupiers in 2004, but then states that the fencer could not find identical panels. However, it is a new fence, whether identical to the previous fence or not, and for which planning permission is therefore required, by virtue of sections 55 and 57 of the *Town and Country Planning Act 1990* as amended. The appellant states that the fence is apparently incessantly damaged by passing drunks, and it would seem therefore that, without it, it would not need repair or replacement.

6. I saw that it is wholly inappropriate and out-of-keeping in this attractive Conservation Area, where it is seen as an alien and very crude addition. It is poorly constructed and finished, especially when compared with the fine quality of the historic garden wall. Its cheap and ill-fitting character, with poor quality materials and workmanship, jars against the delightful traditional historic wall which reflects local distinctiveness. The fence serves only to harm the appearance of the historic wall, and, because of that, to detract from the special historic character of the area.

7. Clearly the harm its intrusive and offensive nature causes cannot be ameliorated by staining or painting. Whilst it might provide a very limited amount of additional privacy, but only above the wall, it does so at the cost of considerable harm to the appearance of the Conservation Area. This character includes particularly its open and spacious nature, and the important views of the settings of the buildings, including their attractive front gardens.

8. The fence is clearly not high enough to prevent beer cans and bottles and other items being thrown over it, or around it where the drive is, and it would be wholly unacceptable to introduce a fence which sought to do that, as it would cause untold harm to the special character of the area. Whilst living in such an attractive, convenient and sustainable location might have very modest disadvantages in terms of these matters, the overall value of the quality and open character of the area is an important value to be cherished, preserved and conserved.

9. Whilst there might be other fences that are similar in the Conservation Area, I have no details about them, nor about the concrete walls, and I do not know whether, for example, they have planning permission or not. I also do not have any details about the alleged damage caused by the County Council. For the avoidance of doubt I have not taken account of the former fence at the appeal site, as I have no information about it, including whether it was lawful. I have in any case dealt with this appeal in accordance with section 38(6) of the *Planning and Compulsory Purchase Act 2004*, and on its merits.

10. The fence fails to preserve the character as well as the appearance of the Richmond Road Conservation Area. It fails to accord with adopted Policy BE1 in the Local Plan, and fails to heed national policy in PPS5. The section 174 appeal on ground (a), the deemed planning application and the section 78 appeal do not succeed.

The appeal on ground (f)

11. Ground (f) is that the appellant considers that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. The appellant states that the materials could be stored out of site on the land and used for other purposes over time. It seems to me that such a large quantity of fencing might be difficult to store out of site on the land, and if left visible would continue to harm the appearance of the Conservation Area. As there is no means by which this suggestion could reasonably be enforced by the Council, the appeal on ground (f) must fail.

The appeal on ground (g)

12. Ground (g) is that the appellant considers that the time given to comply with the notice is too short. The appellant appears to have misunderstood the period for compliance, which does not begin to run until I have upheld the enforcement notice and my decision is issued; the period commences on that date. For that reason the appeal on ground (g) fails.

Conclusions

13. For the reasons given above I conclude that the section 174 appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application. Similarly, I conclude that the section 78 appeal should be dismissed.

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14. 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.

Appeal B: APP/M3835/A/10/2132030

15. I dismiss the appeal.

Stuart M Reid

INSPECTOR