Appeal Decision

Site visit made on 22 June 2009

by M A Champion BSc CEng FICE FIStructE FIHT FHKIE
an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
16 July 2009

Appeal A: APP/M3835/C/08/2091667

2 Bruce Way, Worthing, BN11 5JX.

- 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 P Gilbert against an enforcement notice issued by Worthing Borough Council.
- The Council's reference is E/08/0687/FULL.
- The notice was issued on 28 October 2008.
- The breach of planning control as alleged in the notice is: without planning permission, the erection of a trellis topped fence adjacent to a highway used by vehicular traffic that exceeds one metre in height.
- The requirements of the notice are:
  (i) Remove in its entirety or;
  (ii) Reduce the boundary treatment fronting Bruce Avenue to a total height of no more than one metre above ground level and;
  (iii) Reduce to a total height of no more than one metre above ground level the first metre of the boundary treatment marked A on the attached plan.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal dismissed and the enforcement notice upheld with correction and variation.

Appeal B: APP/M3835/A/08/2091488

2 Bruce Way, Worthing, BN11 5JX.

- 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 P Gilbert against the decision of Worthing Borough Council.
- The application, ref: WB/08/0687/FULL, made on 25 June 2008, was refused by notice dated 29 August 2008.
- The development proposed is a replacement timber fence to east boundary with trellis on top.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. In Appeal A the enforcement notice describes the alleged breach as a fence adjacent to a highway, whereas the requirements refer not only to the boundary treatment fronting Bruce Avenue but also to that marked A on the plan. This I take to be the northern return fence between the Bruce Avenue frontage and the garage. As this section of fence meets the main (eastern) fence at one point only and does not extend in front of it, I do not consider it to be adjacent to the highway. There is thus a discrepancy between the alleged breach and the requirements. Nevertheless as both these parts of the fence

were constructed at the same time and form part of the application which has led to Appeal B, I do not consider that the appellant has been misled, and shall correct the notice accordingly.

2. For the same reason neither do I consider the southern return section between the Bruce Avenue frontage and the house to be adjacent to the highway. This section of fence is not referred to anywhere in the enforcement notice, and does not therefore form part of Appeal A. It is, however, shown on the drawings submitted in connection with Appeal B and I shall deal with it accordingly.

3. The description given above for Appeal B is taken from the application form. However it is clear from the submitted drawings that this appeal also includes return sections of fence at the north and south ends of the main eastern boundary fence. I shall deal with this appeal on this basis.

4. Although in Appeal A ground (a) has not been pleaded, this appeal is exempt from the payment of fees and I must therefore determine the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal A deemed application and Appeal B

Reasons

5. The main issue is the effect of the development on the character and appearance of the street scene.

6. The appeal site lies in a residential area where Policies BE1 and H16 of the Worthing Local Plan, which was adopted in September 2003, deal with design quality and ancillary development to dwellings. These Policies have been saved by a direction of the Secretary of State.

7. The Council also cite Policies DEV1 and CH1 of the West Sussex Structure Plan. However this Plan has now been superseded by The South East Plan, Policies CC6 and BE1 of which address sustainable communities and character of the environment, and management for an urban renaissance.

8. The appeal site is a corner property fronting Bruce Way with a side boundary along Bruce Avenue. A garage and parking space are located at the rear of the site accessed from Bruce Avenue. Boundary treatment along the secondary frontage is a low wall some 0.8 metres high with piers about 1.1 metres high, inside which is a replacement fence. The appellant states, and the Council does not dispute, that the original fence was 2.0 metres high, immediately behind which were a series of trees in excess of 10 metres high. The original fence was dilapidated and both this and the trees were removed, being replaced by the current fence surmounted by a trellis to a total height of about 2.4 metres. This fence has return sections at right angles to the main fence at both the north and south ends. Both return fences lie entirely within the appeal site and not on any of its boundaries.

9. Although the submitted drawings in Appeal B indicate that all three sections of fencing are new fences, I observed that the southern return section is significantly older than the rest and may well, in my view, be part of the

original fence. It is some 2 metres high with planting behind and which extends above it. The appellant indicated that this fence, the top of which is the same level as the bottom of the trellis on the new part, is the same height as the original fence. I therefore consider the solid part of the new fence to be a replacement for that which was there previously, and thus, apart from its new colour, it has minimal impact on the street scene.

10. However, the trellis is an addition to the original fence. It increases its height by some 470 millimetres, resulting in a new structure that, owing to its height and length, appears large and dominant in the street scene, particularly when viewed from the south. This is due in part to its newness and partly to the large setback of 52 Bruce Avenue to the north which emphasises its prominence. While the relative siting of neighbouring properties cannot be altered, the fence will weather to a more subdued colour or could be stained or painted to reduce its impact. Its effect could also be softened by planting as suggested by the appellant. Both these measures could be secured by condition. Nevertheless conditions would not overcome the height of the fence and trellis taken together which, I consider, by reason of its size and prominent location results in an incongruous feature in the street scene, contrary to the policies cited above.

Appeal A ground (f)

11. Although the appellant has not pleaded ground (f) it is not necessary to remedy the breach in toto where something less will suffice to remedy the harm done.

12. The fence is set back behind the front of the house and no objection with respect to visibility has been made. The front garden area and the road junction, which at the time of my visit was well used by traffic, thus remain open. While I acknowledge the Council's aim of maintaining the openness of such areas, I consider that this has to be balanced against the expectation of appellants for privacy and security in their rear gardens. In my view this expectation cannot be met by a fence no more than 1 metre high between the public and private realms.

13. It is normal for such privacy and security to be provided by fences up to 2.0 metres high, as is exemplified by those existing on other nearby corner properties. While on my site visit I observed other fences in the wider area that appeared to be of greater height, but concur with the Council that these do not necessarily justify further such development.

14. I consider that the harm to amenity could be overcome by removal of the trellis. This would result in a fence that would be the same height as that replaced, and would be similar in height and materials to other nearby fences in similar locations. It would thus not be out of keeping in the street scene, and would provide privacy and security in the rear garden. While I acknowledge that the trellis provides additional security, I do not consider that its removal would result in a fence significantly less secure than that to be found in similar nearby locations.

15. Although the garden is overlooked to some extent by the first floor windows of 37 to 43 Bruce Avenue, this is not unusual in urban situations, and I observed that any effect on privacy would not be significantly altered by removal of the trellis.

16. The appeal succeeds to this extent and I shall vary the notice accordingly.

Appeal A on ground (g)

17. This ground of appeal is that the period specified in the notice falls short of what should reasonably be allowed.

18. The appellant states that removal of the fence or its reduction to 1.0 metres high would leave his property vulnerable and insecure given the time required for a replacement hedge to grow. While this may be so, the Council suggests that a replacement fence could be constructed in a location that does not require planning permission pending establishment of the hedge. The period specified allows time, in my opinion, for compliance with the requirements of the notice. The appeal on ground (g) fails.

Conclusions

Appeal A

19. For the reasons given above I conclude that the deemed planning application should not succeed. I shall uphold the enforcement notice with correction and variation and refuse to grant planning permission on the deemed application.

Appeal B

20. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decision

Appeal A

21. I direct that the enforcement notice be corrected by:
A. the deletion from paragraph 3 of the words "adjacent to a highway used by vehicular traffic that exceeds one metre in height" and the substitution therefor of the words "that exceeds one metre in height adjacent to a highway used by vehicular traffic and extending at right angles thereto from its northern end between the highway boundary and the garage";
B. the deletion from paragraph 4 of the words "saved policies DEV1 and CH1 of the West Sussex structure Plan 2001-2016", and the substitution therefor of the words "policies CC6 and BE1 of The South East Plan".

22. I direct that the enforcement notice be varied by the deletion from paragraph 5 of the words:
"(i) Remove in its entirety or;
(ii) Reduce the boundary treatment fronting Bruce Avenue to a total height of no more than one metre above ground level and;
(iii) Reduce to a total height of no more than one metre above ground level the first metre of the boundary treatment marked A on the attached plan." and the substitution therefor of the words:

"EITHER
(i) Remove the trellis topped fence in its entirety or;
(ii) Reduce the boundary treatment fronting Bruce Avenue to a total height of no more than one metre above ground level and;
(iii) Reduce to a total height of no more than two metres above ground level the first metre of the boundary treatment marked A on the attached plan;
OR
(iv) Reduce the height of the boundary treatment fronting Bruce Avenue and a 1 metre length (measured from its eastern end at Bruce Avenue) of the northern return section between Bruce Avenue and the garage by removal of the trellis, leaving a fence approximately 2 metres high."

23. Subject to this correction and variation 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

24. I dismiss the appeal.

M A Champion
INSPECTOR