



Appeal Decision

Site visit made on 6 October 2009

by **R A Sexton BSc(Hons) DipTP MRTPI**

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

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**Decision date:
15 October 2009**

Appeal Ref: APP/W4223/C/09/2106588 1 Deepdale, Oldham OL4 3AU

- 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 Ms Jess Waywell against an enforcement notice issued by Oldham Metropolitan Borough Council.
- The Council's reference is HH/055308/08.
- The notice was issued on 1 May 2009.
- The breach of planning control as alleged in the notice is "without planning permission, the erection of a boundary fence that comprises of concrete posts and base panels with arched timber panels above. The fence runs from the side elevation of the bungalow, for a length of 5.64 metres towards Yorkdale, extending along the back edge of the highway for a length of 8.75 metres and returning towards the bungalow for a length of 5.65 metres. It fully encloses the side and rear garden area and attains a height above ground level of between 2 metres and 2.14 metres to the top of the timber in fill arches."
- The requirements of the notice are: Remove the timber panel fence, concrete posts and base panels.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Decision

1. I allow the appeal on grounds (f) and (g), and direct that the enforcement notice be varied in section 5 WHAT YOU ARE REQUIRED TO DO by:
 - i. the deletion of "Remove the timber panel fence, concrete posts and base panels referred to in paragraph 3 above" and the substitution of the following requirement: "Reduce the height of the timber panel fence, concrete posts and base panels adjacent to the highway to no more than one metre above ground level."
 - ii. And, by the deletion of 2 months and the substitution of 4 months as the period for compliance.
2. Subject to these variations I uphold the enforcement notice.

Reasons

3. The appellant contends that the notice is 'unlawful', having regard to its requirement to remove the base panels and concrete posts in their entirety. This argument is based upon the permitted development rights (PDRs) afforded

a householder for the erection of a means of enclosure. PDRs cannot however be claimed retrospectively for some part of a larger development already carried out. The availability of PDRs is therefore an argument to be made under ground (a) where pleaded or, as in this case, ground (f). I find no fault with the notice in this respect.

The Appeal on Ground (f)

4. For an appeal on ground (f) to succeed the appellant must demonstrate that lesser steps than those in the notice would overcome the injury to amenity that has occurred. The Council has acknowledged that a means of enclosure not exceeding 1 metre in height above ground level could be erected at the back edge of pavement and has conceded that the injury to amenity would be addressed, in part at least, if the notice were amended in this manner.
5. The Town and Country Planning (General Permitted Development) Order 1995 explains that the permitted tolerance applies to a "...means of enclosure erected or constructed adjacent to a highway...". I will therefore vary the notice to take this into account. It would be a matter for the Council to determine, if and when it acts on the upheld enforcement notice, to determine the extent of the remainder of the fence that is adjacent to the highway.
6. The appeal on ground (f) succeeds and I propose to vary the notice accordingly.

The Appeal on Ground (g)

7. The appellant argues that additional time is needed to carry out negotiations with the Council on an alternative scheme and, if successful in that endeavour, to let a contract for the work. It is claimed that an extended period should be linked to the outcome of any planning application she might make.
8. The Council has indicated that it would not be averse to the period for compliance being extended to 4 months. I consider that a more than adequate period to carry out the requirements and, given that the Council provided advice upon what it would consider acceptable in July, make the necessary arrangements for the submission of an application and the letting of a contract for the works. I see no reason to believe that inclement weather conditions would delay the implementation of any approved scheme to a significant degree.
9. The appeal succeeds on ground (g).

RA Sexton
INSPECTOR