

Appeal Decision

Site Inspection on 13 March 2017

by Graham Self MA MSc FRTPi

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

Decision date: 17 March 2017

Appeal Reference: APP/B9506/C/16/3158372

Site at: Hamptworth Farmhouse, Hamptworth Road, Landford, Salisbury SP5 2EA

- The appeal is made by Mrs Pauline van Buren under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the New Forest National Park Authority.
- The authority's reference is EN/16/0093.
- The notice is dated 25 August 2016.
- The breach of planning control alleged in the notice is: "Without planning permission the erection of fencing shown in the approximate positions marked blue on the plan attached to this Notice".
- The requirements of the notice are:
 - i) "Dismantle/remove the fencing shown in the approximate positions marked blue on the plan attached to this Notice to ground level; and
 - ii) Remove any resultant debris arising from compliance with step 5.1 [the above step] from the land affected."
- The period for compliance is 12 weeks.
- The appeal was made on ground (c) as set out in Section 174(2) of the 1990 Act.

Summary of Decision: The appeal fails.

Procedural Matters

1. Many of the points put forward by the appellant relate to the need for the fence for security purposes and to control dogs, its limited visual impact, and the amenity benefits such as screening car headlights. Mrs van Buren also says that no neighbours have objected and that she has tried to find a compromise solution through correspondence with the planning authority by suggesting how the visual impact of the fencing could be reduced.
2. Mrs van Buren appears unfortunately to have not understood the limited scope of her appeal. The points just mentioned have no bearing on the appeal, which has only been made on a legal ground claiming that what has been alleged in the enforcement notice does not constitute a breach of planning control. There is no appeal on ground (a) of Section 174(2) of the 1990 Act (this is the ground under which planning permission may be sought for the development enforced against) and since the fee was not paid for the application deemed to have been made under Section 177(5) of the Act, the issue of whether planning permission could be granted is not before me. The ground (c) appeal has to be decided solely on

matters of fact and law, and these do not include matters such as the visual impact or benefits of the development.

Ground (c)

3. Starting with a basic point, the erection of the disputed fencing was "development" as defined in Section 55 of the 1990 Act. Planning permission was required for the development. A planning application and specific permission is not always required for small-scale development, because many such projects are granted a "general" planning permission. In England the relevant legislation is the current version of the Town and Country Planning (General Permitted Development) (England) Order, abbreviated below to "GPDO".¹
4. There is general agreement between the parties in this case that the fencing enforced against is about 1.8 metres high. (From my inspection I found that at least part of the fencing is in fact about 1.9 metres in height, including a horizontal plank of timber at the bottom.) It is also common ground between both the appellant and the council that none of the fencing is adjacent to a highway used by vehicles. In many locations, the erection of fencing less than 2 metres high not adjacent to a highway used by vehicles would be permitted under Class A of Part 2 of Schedule 2 of the GPDO. However, paragraph A.1(d) of this part of the GPDO provides that development is not permitted by Class A if it would involve development "within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building".
5. Hamptworth Farmhouse is a listed building. The disputed lengths of fencing surround a listed building. The part of the GPDO I have just quoted is written in poorly phrased, contorted English,² but its effect is to take away Class A rights where the development involves the erection of a fence surrounding a listed building. Thus the erection of the fencing was not permitted by Class A; nor was it permitted by any other part of the GPDO, and planning permission was not obtained by any other means.
6. I note Mrs van Buren's reference to advice on the government's planning portal, indicating that an application for planning permission for a fence, wall or gate is only needed "if it would be over 1 metre high next to a highway used by vehicles (or the footpath of such a highway) or over 2 metres elsewhere". Mrs van Buren apparently omitted to read a few lines further on in the planning portal. The section of the portal headed "Fences, gates and garden walls" advises (here I omit non-relevant text): "You will need to apply for planning permission if you wish to erect....a fence and....your house is a listed building." Although in this instance the portal is reasonably accurate, the GPDO is more complicated than many people realise, and the sort of standard generalised information obtainable from internet publications is not necessarily a reliable source of legal advice.
7. I realise that the appellant is seeking what she calls "a sympathetic ruling"; but I have to apply the law as it stands - an appeal decision which did not correctly do so would be open to challenge and potential quashing by the courts.

¹ The appellant quotes from an earlier 1995 version of the Order, but the relevant provisions affecting this appeal have not changed between 1995 and the current (2015 as amended) Order.

² In particular, in the text I have quoted the punctuation with a comma after "or" but not after "to" appears to be misplaced and results in the unsatisfactory phrase "development to a fence". Despite this flaw, I consider that the legislators' intention in this sub-paragraph is reasonably capable of interpretation and that the erection of a fence surrounding a listed building is thereby excluded from Class A of Part 2.

8. I conclude that the erection of the fence was unauthorised development, which constituted a breach of planning control. Therefore the appeal on ground (c) does not succeed.

Formal Decision

9. I dismiss the appeal and uphold the enforcement notice.

G F Self

Inspector