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## Appeal Decision

Site visit made on 12 February 2019

**by Elizabeth Jones BSc (Hons) MTCP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 March 2019**

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**Appeal Ref: APP/J3720/C/18/3207050**

**Hornbeam House, 1 Brook Street, Fenny Compton, Southam CV47 2YH**

- 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 Mrs Kaja Bjelke-Jones against an enforcement notice issued by Stratford on Avon District Council.
  - The enforcement notice was issued on 11 June 2018.
  - The breach of planning control as alleged in the notice is without planning permission the erection of a close boarded timber fence measuring approximately 2.5m in height adjacent to the highway used by vehicular traffic (in approximate position marked A-B on the Plan).
  - The requirement of the notice is to a) remove the fence along the alignment A-B from the Land.
  - The period for compliance with the requirements is 4 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
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### Formal Decision

1. The appeal is dismissed and the enforcement notice is upheld.

### Reasons

2. The ground of appeal is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173(4) of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). The notice requires the removal of the fence and so the purpose of the notice is clearly to remedy the breach of planning control in its entirety by restoring the land to its condition before the breach took place (s173(a)) rather than to remedy injury to amenity by requiring lesser steps to be taken (s173(b)). That purpose can only be achieved in this case by removing the fence.
3. The appellant has put forward a number of arguments regarding the Council's reasons for issuing the enforcement notice, design, character and appearance, the effect on the Conservation Area, highway safety, other boundary treatments in the area, planning policy and the previous appeal decision<sup>1</sup>. Also, the merits of painting/staining the fence and/or carrying out further landscaping. These matters are not relevant under a ground (f) appeal and could only be considered in the context of a planning application for the fence. No appeal has been brought on ground (a). An appeal on ground (f) cannot be

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<sup>1</sup> APP/J3720/17/3170381.

used to consider the planning merits or bring about a deemed application for the development. Thus, despite the representations in support of the fence, further consideration of whether the fence causes 'harm' and to what extent any 'harm' impacts upon the public realm and the extent of any 'public benefits' is not a matter for a ground (f) appeal.

4. The comments made regarding the difficulties of building a boundary wall<sup>2</sup> also carry little weight because in these circumstances, the only point at issue under the ground (f) appeal is whether the requirements of the enforcement notice exceed those necessary to achieve the purpose which in this case is to remedy the breach of planning control. Leaving the fence would not remedy the breach.
5. In order to remedy the breach, it is not excessive to require the removal of the fence. Whilst I acknowledge there is a financial cost in the removal of the fence, modification of the fence would not remedy the breach of planning control that has occurred. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.
6. With regard to other arguments made, the fence is not an enclosure within the meaning of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The fence falls within Class A of Part 2 of Schedule 2 of the GPDO which concerns "the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure". The appellant acknowledges that due to its height the fence cannot be considered permitted development under Class A of the GPDO. In any event, I am informed by the appellant that the fence was erected at its current height to provide privacy and security. Reduction to one metre would not in any way at all serve that purpose and thus I am not convinced that a fall-back position is realistic, and I give it limited weight. It appears to me that the arguments made by the appellant regarding whether the fence is permitted development by virtue of the GPDO is more a matter for ground (c); that those matters if they occurred, do not constitute a breach of planning control. Had an appeal been brought on ground (c), it would have failed accordingly.
7. The appellant contends that her rights under Article 8 under the European Convention on Human Rights [Human Rights] are engaged and must also be considered. The Human Rights Act 1998, Article 8 of the First Protocol, is primarily concerned with the right to live a family life without interference. I recognise that this appeal concerns the appellant's home and family life. However, it does not follow that removal of the fence would be a violation of her human rights. I have already found that the requirements in the enforcement notice are not excessive to remedy the breach of planning control. In terms of Human Rights, I find that they are not a disproportionate remedy when balanced against the need to uphold the operation of the planning system, which includes the requirement for development to accord with the planning policies of the Council's statutory Development Plan; that being made and applied in the wider public interest.
8. I note the appellant's comments regarding the Council's decision concerning the expediency to issue an enforcement notice, the perceived attitude of the Council and communication with the Council, but these are not matters that are

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<sup>2</sup> Planning permission Ref: 16/00341/FUL.

determinative to the appeal. I accept that enforcement action is intended to be remedial and not punitive. However, in these circumstances, the only point at issue under ground (f) is whether the enforcement notice's requirements exceed those necessary to achieve the purpose which in this case is to remedy the alleged breach of planning control. Leaving the fence in situ would not remedy the breach of planning control that has occurred.

*Elizabeth Jones*

INSPECTOR