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# Appeal Decision

Site visit made on 24 August 2023

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 25/08/2023**

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## Appeal Ref: APP/F4410/C/22/3312558

### The land situate and known as land at 9 Doncaster Road, Conisbrough, Doncaster DN12 3AF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Claire Huntrod against an enforcement notice issued by Doncaster Borough Council.
  - The notice was issued on 27 October 2022.
  - The breach of planning control as alleged in the notice is the Land has without planning permission, the unauthorised development of the erection of a two-metre in height metal palisades fencing to the front boundary of a residential property adjacent to a highway on the Land in the position as shown coloured blue on the attached Location Plan.
  - The requirements of the notice are to either:
    - i) Reduce the height of the metal palisades fencing as shown in the position coloured blue on the attached Local Plan to no more than 1 metre in height on the Land; or
    - ii) Remove in its entirety from the Land the metal palisades fencing as shown in the position coloured blue on the attached Location Plan.
    - iii) Upon completion of either i or ii above to either:
      - a) Remove permanently from the Land all the resultant materials and debris arising from compliance with the aforementioned requirements of this Notice; or
      - b) Store the resultant materials in a neat and tidy manner on the Land at least one metre away from the front boundary of the Land.
  - The period for compliance with the requirement is one 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 an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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## Decision

1. It is directed that the enforcement notice is corrected by:

*In section 3 THE BREACH OF PLANNING CONTROL, all the words shall be deleted and substituted for the words 'Without planning permission, the erection of a 2 metres high metal palisade fence in the position shown coloured blue on the attached Location Plan.'*

*In section 5 WHAT YOU ARE REQUIRED TO DO, delete all the words in step iii and substitute the words 'Remove all the resultant materials and debris arising from compliance with i or ii above from the Land.'*

## Matters Concerning the Enforcement Notice

2. It is incumbent upon me to put the enforcement notice (Notice) in order. It is clear from the evidence before me, and what I saw on site, that it is the erection of metal palisade fencing (the fence) in the position shown coloured

blue on the attached Location Plan that constitutes the matter alleged. I have not been provided with any evidence to show that the fence is 2 metres in height. However, the planning history states that planning application reference 21/00652/FUL was for the 'Change of use of land to residential garden to include **2 m high Palisade Fence (Retrospective)**' [my emphasis]. On this basis it is reasonable to assume that the fence is 2 metres high.

3. The allegation, as set out in the Notice, contains superfluous words such as, 'The Land has', 'the unauthorised development of' and 'to the front boundary of a residential property adjacent to a highway on the Land'. Furthermore, the allegation describes the fencing as 'palisades', whereas the fence type is normally identified as 'palisade'. I shall delete the superfluous words and correct the fence type for clarity.
4. The requirements of the Notice provide for either the removal of the length of fence in the position shown coloured blue on the Location Plan (Step 1) or a reduction in the height of that length of fence to no more than one metre in height (Step 2). Given the inclusion of these 2 steps, the purpose of the Notice is unclear as to whether it seeks to remedy the breach of planning control or the injury to amenity. The reasons for issuing the Notice include that the fence, by virtue of its height, design and material, is intrusive, incongruous and not in keeping with the character of residential properties in the area, thereby causing a harmful visual impact. I therefore find the purpose of the Notice is to remedy the injury to amenity.
5. The requirements would normally provide for the removal of the resultant materials arising from Steps i or ii from the Land. Step iii however provides either/or options to remove all the resultant materials from the Land or to 'store the resultant materials in a neat and tidy manner on the Land at least one metre away from the front boundary of the Land'. It is unclear how retaining resultant materials on the Land would remedy the injury to amenity and storing the materials in a 'neat and tidy manner' is not sufficiently precise. This imprecision does not invalidate the Notice as I can correct the Notice by deleting Step iii(b) without causing injustice.

### **Background and Procedural Matters**

6. As mentioned above, a retrospective application<sup>1</sup> for the change of use of land to residential garden to include new 2m high palisade fence was refused planning permission on 7 March 2022. The reason for refusal related only to the palisade fencing, which the Council considered to be detrimental to the street scene and harmful to residential amenity by virtue of its height, design and material. The Council's appeal statement refers to the Land being 'a parcel of overgrown land, which has been fenced off to incorporate it within the residential planning unit of 9 Doncaster Road'. I saw that the Land is overgrown to such an extent that it was not possible to confirm the Council's assertion that it is used as part of No 9's planning unit. The appellant has not however disputed this point and the planning history would suggest that, on the balance of probability, the Council's assertion is more than likely correct.
7. The Notice only attacks the fence along the Doncaster Road frontage and a short perpendicular section. The fencing along the remainder of the side boundary and the use of the land as part of No 9's residential planning unit

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<sup>1</sup> Council reference: 21/00652/FUL

(garden) are not mentioned in the allegation. S173(11) of the 1990 Act as amended provides that where an enforcement notice could have required buildings to be removed and activities to cease, but does not do so, and all the requirements of the enforcement notice have been complied with, then so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of s73A in respect of development consisting of the building or carrying out of activities. Should the Notice be upheld, and the requirements complied with, then planning permission will be deemed to have been granted by s73A for the remainder of the metal palisade fencing and the use of the land as garden to No 9.

### **The Ground (a) Appeal and the application for deemed planning permission**

8. An appeal on this ground is that planning permission should be granted for the corrected matter alleged, namely the erection of a 2 metres high metal palisade fence in the position shown coloured blue on the attached Location Plan. The **main issue** is the effect of the development on the character and appearance of the host property and wider locality.
9. The area surrounding the appeal site contains a mix of residential and commercial properties. Immediately to the front of the host dwelling and its neighbour to the west are low red brick walls located at the back edge of the footway. However, in the surrounding locality there are a wide range of boundary treatments. These include natural stone walls, high metal railings, close boarded fences, untreated palisade fencing and low brick walls with fence panels above. The type and colour finish of the fence may be unique in this locality but that does not necessarily make it harmful to visual amenity.
10. The surrounding area also contains a substantial amount of street furniture, such as pedestrian crossings, traffic lights, lighting columns, roadside railings, bus stops and shelters, and highway signage. Most of this street furniture is of a functional design and constructed of materials that include metal, albeit with a predominantly black colour finish. The height, design and material of the fence is not dissimilar to the surrounding street furniture and does not appear visually incongruous or intrusive in the streetscape, when considered in this wider context.
11. Furthermore, the fence is present along at least 2 boundaries of the land edged red on the Location Plan. As the Notice only requires the removal or lowering of the section coloured blue on the Location Plan, a significant proportion of the fence would be retained. The surrounding landform slopes down from the front of the dwelling and up to the rear and east along Doncaster Road. As such, the length of fence along the side boundary steps up to follow the gradient of the land. The side fence also ties into the length running parallel to Doncaster Road, which is to remain. Given the significant slope of the land, much of the retained fence would remain visible in the streetscape. Furthermore, the pedestrian access gates located at the top and bottom of the pedestrian footway adjacent to the appeal site's side boundary are the same height, design and material as the development.
12. The fence's design provides views through into the site. The fence is finished in green, which blends into the vegetation located within the site. The design and colour finish of the fence is such that it is barely discernible in the streetscape, unlike adjacent red brick walls, which are visually prominent. While the

vegetation may die back in winter months or be removed, the fence would not become more visually prominent as the sloping nature of the land ensures that some form of greenery would still be visible beyond it.

13. The site may be located within a residential policy area, but in accordance with policy 10 of the Doncaster Local Plan (2021) (the DLP) the fence does not adversely affect the residential amenity of any adjacent residents. While this type of fence may not be a traditional means of residential boundary delineation, the appeal development has a high-quality finish, which responds positively to its context, setting and site features. The design also positively reduces the fear of crime through clear demarcation and represents a robust boundary feature.
14. Taking all these factors together, I find the fence is in keeping with and sympathetic to the character of the surrounding built environment. The development therefore respects and enhances the character of the locality, in accordance with policies 10, 41 and 47 of the DLP.
15. While the fence may be high, its design ensures that views through to the site remain available and therefore it does not portray a blank elevation to the public realm. As such there is no conflict with the guidance set out in the withdrawn South Yorkshire Residential Design Guide (2011).

*Conclusion on ground (a)*

16. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected.
17. The appeal on grounds (f) and (g) do not therefore fall to be considered.

*M Madge*

INSPECTOR