



**Department of the Environment and
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LPA's Ref 4/1316/84/E JK/JDS

Mr A C Husband
1 Wareside
Woodhall Farm
HEMEL HEMPSTEAD
Herts
HP2 7NQ

Your reference

Our reference PLANNING DEPARTMENT
T/APP/A1910/C/84/2962/DP6

RDate		Ack.	
C.P.O.	27 MAY 85	J.C.	Admin. File

Received -8 MAY 1985

Comments

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
LAND AT 1 WARESIDE, HEMEL HEMPSTEAD

1. As you have already been informed, I have been appointed by the Secretary of State for the Environment to determine your appeal against an enforcement notice issued by the Dacorum District Council, concerning the above mentioned property. I have considered the written representations made by you and by the Council, and also those made by interested persons. I inspected the site on 6 February 1985.

2. The enforcement notice is dated 20 August 1984, and it alleges the making of a material change of use of the land from amenity open space to use as part of residential garden. The requirements of the notice are:

- i. the discontinuance of the use of the land as part of residential garden;
- ii. the removal of the 6 ft high close boarded wooden fence from the land;
- iii. the removal of the hedge planting (conifers) from the land.

The period allowed for compliance with the notice is 3 months. Your appeal was made on ground 88(2)(a) only under the 1971 Act as amended by the Act of 1981.

3. Although you did not challenge the validity of the notice, or appeal on either grounds (b) or (c), these aspects have been considered. The representations indicate that when planning permission was granted for the estate of which your property forms part, it was intended that the land between the highway boundaries and the walls of the houses facing the roads, or as in your case, the side screen fencing, should be left open. I note that the Council refer to the area forward of the screen fence as "open amenity land", but it appears that it has always been in the same ownership as the house and its plot, and that the owner has been responsible for its maintenance. In other words it has always been part of the curtilage of the house. Whilst it may have been the intention that such areas of land should remain open, there do not appear to be any conditions attached to the original permission to this effect, nor does it appear that the permissions granted under the terms of the General Development Order have been restricted in any way. Thus I am led to the conclusion that the land affected by the notice is still being used as part of the curtilage of the house and that there has been no material change of use.

4. The representations and the requirements of the notice itself suggest that the Council's real concern is that the fence screening your back garden is now closer to the highway boundary than the fence shown on the plans attached to the planning permission, and that small evergreen trees have been planted close to the highway boundary. In my opinion these are operations, and if it had been my intention to uphold the notice, then as you appear to have understood what the notice intended, I consider that I could have corrected the notice in this respect without prejudice to either party.

5. Dealing first with the planting of the evergreen trees, Article 3 of the General Development Order under Class II grants permission for:

"1. The erection or construction of gates, fences, walls or other means of enclosure not exceeding 1 m in height where abutting on a highway used by vehicular traffic or 2 m in any other case, and the maintenance, improvement or other alteration of any gates, fences, walls or other means of enclosure: so long as such improvement or alteration does not increase the height above the height for a new means of enclosure."

I understand that there is no Article 4 direction restricting permitted development which affects the appeal site. Similarly there do not appear to be any conditions attached to the planning permission for the estate which would limit development permitted by the General Development Order. Thus in my opinion the planting of trees under 1 m in height along the highway boundary does not in this case amount to a breach of planning control.

6. Turning now to the screen fence, it seems to me that the moving of the fence from its original to its present position amounts to development for which planning permission is required. In the absence of any evidence of permission having been granted it follows that a breach of planning control had occurred. So far as the planning merits are concerned, it is clear that the fence in its present position has reduced the area of land between the fence and the highway boundary from what was shown on the plans attached to the planning permission. However in my opinion the fence in its present position does not injure the character or appearance of its surroundings to an appreciable extent, a view which appears to be held by a number of local residents. It also has the advantage of providing privacy for a slightly larger area of back garden than was originally proposed. In my opinion there is insufficient justification for refusing planning permission for the retention of this fence.

7. I have taken into account all the other matters raised in correspondence, but they are not sufficient to outweigh the considerations which have led to my decision.

FORMAL DECISION

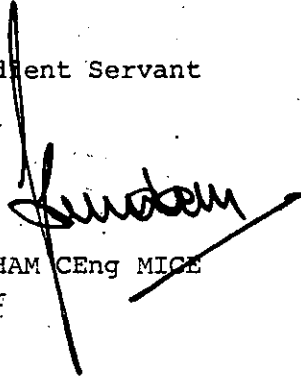
8. For the reasons given above, and in exercise of the powers transferred to me, I hereby allow your appeal, direct that the enforcement notice be quashed, and grant planning permission for the retention of the side screen fencing in its present position at 1 Wareside, Hemel Hempstead.

9. This letter is issued as the determination of the appeal before me. It does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than Section 23 of the Town and Country Planning Act 1971.

RIGHT OF APPEAL AGAINST DECISION

10. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Sir
Your obedient Servant


A L BURCHAM CEng MICE
Inspector

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