

Appeal Decision Notice

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Decision by Trevor A Croft, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: P/ENA/270/58
- Site address: Whitehill, 6 Baikie Place, Thrumster, Wick, Caithness, KW1 5TE
- Appeal by Mrs Evelyn Gibbs against the enforcement notice dated 6 April 2009 served by Highland Council
- The alleged breach of planning control: The erection of a timber fence which has not been approved by the Planning Authority as required by the terms of condition 4 of planning consent no. 03/00340/FULCA.
- Date of site visit by Reporter: 15 July 2009

Date of appeal decision: July 2009

Decision

I allow the appeal and direct that the enforcement notice dated 6 April 2009 be subject to the variation of the terms of the notice by the deletion of the words: "Dismantle the wooden fence and remove dismantled materials from the site" and the substitution therefor of the words: "Reduce the height of the fence to 1 metre along the whole length of the northern boundary of the garden".

Background

The enforcement notice arose out of apparent action by the developer of the appeal and neighbouring properties to construct boundary fences 1.8 metres high around some of the gardens, without reinstating a stone boundary dyke. The dyke has subsequently been reinstated and parts of the fences reduced in height. There are suggestions in submissions that the enforcement notice may have been incorrectly served and may be a nullity. I have considered this carefully and found nothing to suggest this to be the case.

Reasoning

1. The appeal against the enforcement notice was made on the following grounds as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997:
 - (a) That in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitations ought to be discharged.



- (g) That any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.

2. Since the enforcement notice was served the greater part of the fence has been reduced in height to approximately one metre, the exception being a short length of less than 2 metres where it adjoins the boundary fence of no. 5, where it is retained at some 1.8 metres high. A meeting has been held, convened by the local MP, together with the occupiers of nos. 5 and 6 and representatives of Norscott Joinery Limited (the developer) and the planning authority. At the meeting it was agreed that Norscott would submit a planning application including, amongst other fence works, regularising the fence around the garden of the appeal property at a height of 1 metre. This would involve reducing the height of the remaining portion of 1.8 metre fence to 1 metre, with associated strengthening of the supports to retain the structural integrity of the neighbours' fence. The planning application has now been submitted but not yet determined by the council.

3. In its submission the council suggests the fence be allowed as described in the above paragraph. This would leave a fence some 1 metre in height along the northern edge of the appeal property's garden, running just inside the stone dyke referred to above. This would be perfectly in keeping with the character of the area, including other boundary fences, and will not affect the amenity of any neighbouring residents. Most of the work has already been carried out and the reduction of height of the remaining short section will be in line with the planning application also described above. No development plan issues arise and this is a common sense solution giving a properly fenced garden for the appellant. The appeal under ground (a) therefore succeeds, and this can be dealt with by an amendment to the wording of the notice. To regularise the matter I have referred to the whole length of fence along the north side of the property.

4. With regard to the appeal under ground (g) I accept the view put forward by the council that a period of 28 days to reduce the height of the remaining short length of fence is reasonable. The appeal under ground (g) therefore fails.

5. For the avoidance of doubt a plan showing the length of fence affected by the notice is attached.

This is a true and certified copy of the decision issued on 27 July 2009.

Trevor A Croft
Reporter