

Appeal Decision

Site visit made on 9 January 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 11 January 2017

Appeal Ref: APP/N4720/C/16/3159646

Kastandene, East Park Street, Morley, Leeds, LS27 0JP

- 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 Act).
 - The appeal is made by Dr Brian Sulaiman against an enforcement notice issued by Leeds City Council.
 - The notice was issued on 14 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a wall with attached railings exceeding one metre in height adjacent to a highway used by vehicular traffic.
 - The requirements of the notice are:
Step One - Remove the wall and associated railings in their entirety from the land.
Step Two - Remove all debris and detritus resulting from Step One.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the 1990 Act also falls to be considered.
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Decision

1. It is directed that the enforcement notice be varied by inserting in Section 5, Step One, after the word "land", the following words:

"OR reduce the maximum height of the wall and railings so that no part of them is higher than 1 metre above the level of the adjacent public footway".
2. Subject to the variation the appeal is dismissed, planning permission is refused and the enforcement notice is upheld.

The appeal on ground (a)

3. The main issue is the effect of the development on the character and appearance of the area.
 4. Kastandene is a two storey detached dwelling house set well back within its rectangular plot and is similar to other house types and plots in a street which is predominantly residential in character and appearance. The tall front boundary wall as constructed is finished in render with railings projecting above the top.
 5. Kastandene aside, front boundaries along the street are generally low with hedges or shrubbery, although there are some with tall garden fencing.
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6. Taking its elements in isolation, I consider that the wall has no adverse effects on the street scene in respect of its design, materials, and colour finish.
7. However, it is of such a height that it is anomalous with the scale of boundary walls and fences one would expect in the context of this residential street. Its height combined with its length results in a solid massing that is prominent and overbearing in the street scene. It is also out of scale with the host dwelling house which, apart from the open gates, is largely hidden. As such, it is incongruous with, and detracts from, the character and appearance of the residential environment.
8. I acknowledge the appellant's evidence, including photographs, in respect of boundary treatments at other properties in the area. However, I do not know when, or if, any of those were granted planning permission; the Council indicates that some may be immune from enforcement action due to their age. That notwithstanding, none of them in their context relate as poorly to the street scene as does the wall subject of this appeal.
9. I also note the appellant's evidence with regard to other development, such as the shipping container, and the appearance of the wider area. However, I am not persuaded that the argued poor appearance of other developments justifies allowing this development, which I find results in significant harm to the character and appearance of the area. Additionally, some of the other properties referred to by the appellant are not residential and hence do not provide appropriate contextual comparisons.
10. I accept that the appellant wished to improve the security of his property and the wall undoubtedly does so. However, there are many ways of improving security. In this regard there is no convincing evidence before me which demonstrates that greater security could not have been achieved in other ways without resulting in the level of harm I have identified.
11. I conclude that the wall and railings results in significant harm to the character and appearance of the area in conflict with Policy P10 of the Leeds Core Strategy and Policies N25, GP5 and BD6 of the Leeds Unitary Development Plan which, taken together, seek to ensure that new development, including boundary walls, are of good design appropriate to the location, scale, function, and character of the area.
12. The appeal on ground (a) therefore fails.

Other matters

13. Class A, Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') grants planning permission for boundary walls and fences up to 1 metre in height where they are adjacent to a highway used by vehicular traffic. Confirmation that such "permitted development" rights exist is referred to in the Council's statement.
14. Although permitted development cannot be retrospective, an enforcement notice cannot take away lawful rights. Hence, following complete demolition and removal of the wall and railings in compliance with the notice, the appellant could then erect another one to a height of 1 metre.
15. Therefore, given that I have found no harm in respect of the materials and finish of the wall and railings, I consider it is reasonable to insert an alternative

requirement to reduce the height of the wall and railings so that no part of them is higher than 1 metre above the level of the adjacent public footway.

16. That would meet the purpose of the notice set out in s173(4)(a) of the Act and gives the appellant an alternative of reducing the height of the wall and railings, rather than complete demolition. I am satisfied that the notice can be varied in this way without resulting in injustice to either party.

17. I have therefore varied the notice requirements accordingly as set out in the formal Decision above.

Thomas Shields

INSPECTOR