

Appeal Decisions

Site visit made on 27 March 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 13 April 2017

Appeal A: APP/N4720/C/16/3161327

Appeal B: APP/N4720/C/16/3161328

Eastfield, Scotland Lane, Horsforth, LS18 5SE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr P J Newstead (Appeal A) and Mrs N C Newstead (Appeal B) against an enforcement notice issued by Leeds City Council.
 - The notice was issued on 29 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a wall that exceeds one metre in height, located adjacent to a highway used by vehicular traffic, which exceeds the height permitted under Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The requirements of the notice are:
Either:
Dismantle the wall in its entirety and remove all the excess materials resulting from the wall from the land
Or:
Reduce the height of the wall and gates so that no part exceeds one metre in height when measured from ground level so that the development accords with the provisions of Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
And remove all excess materials resulting from the height reductions from the land.
 - The period for compliance with the requirements is 2 months.
 - Appeal A is proceeding on grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended (the Act). Appeal B is proceeding on ground (c). Since the prescribed fee has been paid within the specified period for Appeal A, 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. The appeals are dismissed, planning permission is refused and the enforcement notice is upheld.

Appeal site

2. The appeal property is a dwelling house with a wide frontage and is enclosed by a front boundary wall of approximately 1.75 metres height above the pavement. Two sets of gates provide vehicular access onto Scotland Lane.

The appeals on ground (c)

3. A ground (c) appeal is a claim that the matters referred to in the alleged breach of planning control, at Section 3 of the enforcement notice, do not
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constitute a breach of planning control. The onus of proof in this legal ground of appeal is upon the appellant, and the test of the evidence is on the balance of probability.

4. The appellant's case is that the wall and gates benefit from planning permission (permitted development) granted by Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO").

5. Class A of the Order grants planning permission as follows:

The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

6. But development is not permitted by Class A if -

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed –

(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;

(ii) in any other case, 1 metre above ground level;

7. Section 336 of the Act defines "building" as including *any structure or erection, and any part of a building*, and in this regard there is no dispute that the wall and gates comprise a building and 'development' as defined by section 55 of the Act.
8. However, Article 2(1) 'Interpretation' of the GPDO states that for its purposes "building" does not include any gate, fence, wall or other means of enclosure. Therefore, Article 2(2) of the GPDO, which explains how the height of *buildings* should be measured on sites with non-uniform ground level, is not relevant to Class A set out above because of the exclusion at Article 2(1). Given these factors, the appellant's argument that the adjoining higher garden level on the inside of the boundary wall should be used to assess the height of the wall is incorrect.
9. Thus Class A simply relates to the height of walls, fences and gates relative to an adjacent highway and it seems to me that the GPDO was intentionally articulated in such a manner. The wall and gates subject of the notice are clearly adjacent to a highway used by vehicular traffic and exceed one metre in height above ground level. They are not therefore permitted development under Class A.
10. Since no planning permission exists for the wall and gates, they are a breach of planning control. The appeal on ground (c) therefore fails.

The appeal on ground (a)

11. The main issue is the effect on highway safety.
12. As constructed, I saw that the sections of tall boundary wall either side of the access gates considerably restrict visibility along the pavement and vehicular

- carriageway in each direction. In such circumstances exiting drivers would be forced to edge forward over the pavement to gain better visibility. Conversely, visibility of exiting drivers to other road users would be similarly restricted.
13. In order to overcome these visibility limitations the appellant has installed a camera monitoring system (CMS). The CMS was not present at the time of an earlier appeal decision¹, and new parking restrictions have been introduced on Scotland Lane. Given these changes in circumstances, I have determined this ground of appeal afresh on its own merit.
 14. During my visit to the appeal site I was provided with a demonstration of the CMS. In brief, vehicles enter the property via the southern-most access gate only, and exit only via the northern access gate. The cameras, which monitor the pavement and road in each direction, are mounted on a pole just inside the boundary wall at a point approximately midway along the frontage. A monitoring screen attached to the southern wall of the northern access provides exiting drivers with the ability to check each direction for pedestrians and vehicles, or any other issues that may arise.
 15. I accept that the operation of a single entrance and single exit for vehicles, together with the CMS, improves visibility than would otherwise be the case. However, with particular regard to pedestrians approaching the northern exit gate I am concerned that their safety is substantially dependent upon the efficacy of the CMS, coupled with the alertness and vigilance of the exiting driver, rather than pedestrians having a sufficient view of emerging vehicles and a reasonable, if not equal, degree of independent ability to exercise their own vigilance and preparedness.
 16. My concern was underlined by the CMS demonstration undertaken during my visit to the appeal site. It became clear when looking at the exit monitoring screen that the viewing field of the cameras left a blind spot along a section of the pavement, that being part of the immediate approach to the vehicular exit point. Thus, for a short section of pavement leading up to the exit, pedestrians disappeared from view on the monitoring screen. I consider that to be inherently dangerous for pedestrians (and cyclists), and highlights the need for pedestrians to have a reasonable degree of independent capability with regard to their own safety.
 17. Additionally, the Council's undisputed evidence resulting from consultation with the Highway Authority, is that Scotland Lane is a busy route with vehicle speeds often exceeding the 30mph speed limit, thereby necessitating a requirement for 2.4 by 90 metre visibility splay in each direction. The 60 metre visibility distance provided by the CMS therefore fails to provide that level of visibility.
 18. Taking account of all the above factors, I consider that the development results in significant harm by creating an unacceptable increase in risk to highway safety in conflict with Policies P10 and T2 of the Core Strategy (2014) and saved Policy GP5 of the Leeds Unitary Development Plan (2006) which together seek to ensure that development creates safe and secure environments and would not create or add to problems of highway safety.

¹ APP/N4720/D/16/3156156

19. The appellant refers to the wall and gates in terms of their appearance, their compatibility with the character and appearance of the area, and related support from Development Plan policies and the NPPF². The Council does not dispute these matters and I have no reason to do so either. However, while there is no objection or policy conflict in respect of these matters they do not outweigh the significant harm I have identified with regard to highway safety.
20. I have taken account of the new parking restrictions prohibiting on-street parking during the hours of 10:00 to 16:30 Monday to Friday. However, this does not overcome my concerns relating to sub-standard visibility splays, pedestrian visibility, or the efficacy of the CMS. A planning condition purporting to secure maintenance of the CMS would be very difficult to enforce and in any event would also not overcome my concerns on these matters.
21. Support for the development from local residents, and the existence of sub-standard visibility splays at other properties in Scotland Lane, also does not outweigh the significant harm I have identified.
22. I acknowledge that the garden level is approximately 0.85 metres above the level of the pavement. However the Council's photographic evidence clearly shows that the garden level was raised from its previous much lower level. I see no reason why a secure and safe boundary with the highway cannot be provided without resulting in the significant harm I have described in respect of highway safety.
23. For all the above reasons the ground (a) appeal fails.

Thomas Shields

INSPECTOR

² The National Planning Policy Framework (2012)