
Appeal Decisions

Site visit made on 20 June 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 11 July 2017

Appeal A Ref: APP/E3715/C/17/3167963

Appeal B Ref: APP/E3715/C/17/3167964

Highview, Withybrook Lane, Shilton, Coventry CV7 9HY

- 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 appeals are made by Mr Ian Townsend (Appeal A) and Mrs Julie Townsend (Appeal B) against an enforcement notice issued by Rugby Borough Council.
 - The enforcement notice, numbered MEA/3-6-132, was issued on 27 January 2017.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a wall and gates exceeding 1 metre abutting the highway.
 - The requirements of the notice are: (i) Reduce the gates and wall to a height of 1 metre; or (ii) Remove the gates and wall and return the land to its former condition.
 - The period for compliance with the requirements is 28 days after the notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), and (g) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on grounds (c) and (g). Since the prescribed fees have not been paid within the specified period in relation to Appeal B, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered in relation to that appeal.
-

Decisions

1. The appeals are allowed and the enforcement notice is quashed.

Procedural Matters

2. Two appellants were named on the same appeal form; Mr Ian Townsend and Mrs Julie Townsend. In such cases, the Planning Inspectorate allocates a reference number to each appellant because, in effect, two appeals have been made. I have referred to the appeals as Appeal A and Appeal B, as set out in the banner heading above. Where an appeal is made on ground (a) a fee is payable. It is common that the fee will only be paid in relation to one appeal where multiple appellants are named and that was the case in this instance. Accordingly, the appeal on ground (a) only proceeds in relation to Appeal A.

The Appeals on Ground (c)

3. An appeal on ground (c) is made on the basis that there has not been a breach of planning control. In this case, the appellants contend that the wall and gates constitute "permitted development" under the terms of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). Under paragraph A.1(b) of that Class the erection of a wall, gate or other means of enclosure is not permitted if the structure would be over 2m in height. In this case, the parties agree that the wall and gates
-

are 1.99m high. However, under paragraph A.1(a)(ii) the maximum permitted height is 1m where the gate, fence, wall, or other enclosure is 'adjacent' to a highway used by vehicular traffic. The dispute in this case revolves around the question of whether the wall and gates are considered to be adjacent to Withybrook Lane, the highway that runs past the site.

4. The word 'adjacent' is not defined in the Planning Act. The position established by the courts is that the word 'adjacent' does not necessarily mean that the fence has to be abutting or touching the highway. In the case of *Simmonds v SSE and Rochdale MDC* [1981] it was held that a fence higher than one metre and less than one metre from a footway to a highway did abut the highway. A 2m figure has also been referred to in Case Law and I note that the appellants have referred to the 2m figure as an accepted 'rule of thumb'. It seems to me that a number of factors may be relevant based on local circumstances including the character of the highway and the surrounding area, the inter-visibility between the means of enclosure and the highway and the local topography for example. In other words, the degree of set-back from the edge of the carriageway alone may not be decisive and it is difficult to apply a rule of thumb on that basis because any judgement will be a matter of fact and degree based on the circumstances of the case.
5. In this case, Withybrook Lane is a country lane with a predominantly rural feel, albeit with a number of houses and farmsteads along its length. The detached garage of the neighbouring bungalow is situated immediately to the north of the wall. The appeal site sits on a sharp bend in the road and the wall and gates are clearly visible as one approaches from the west but less so from the south due to the fact that the structure is set back behind the carriageway such that intervening vegetation and hedgerows provide a visual screen from that angle.
6. At close quarters, the back edge of the metalled surface of the highway can clearly be distinguished, as shown on the drawing submitted by the appellant¹. The wall runs broadly parallel with the highway for the most part, save for two small sections at each end which project forward towards the road. The forward projection at the southern end of the wall is approximately 1m in height.
7. The appellants estimate that the main section of the wall, which runs parallel with the highway, is set back between 9.3m and 6.2m from the back edge of the highway. Immediately beyond the edge of the road is a hard surface of approximately a metre in depth beyond which two planting beds have been created, one either side of the main vehicular access into the dwelling. To my mind, that change in surface and the presence of the planted beds provides a significant delineation between the edge of the highway and the boundary feature in this case.
8. It is also notable that the main section of the wall is set back such that it aligns roughly with the rear elevation of the detached garage associated with the adjacent dwelling and the back of what appears to be an agricultural store in the adjacent paddock². In other words, it is set further back from the edge of the highway than those adjacent structures. Whether that was deliberate is

¹ Drawing number 1244-PE6 A

² As can be seen on the photograph within the Council's statement

not clear but it appears to me that the alignment takes its cue from the location of those features, as opposed to the location of the carriageway.

9. I note that the lower section of the wall to the south is closer to the road than the rest of the structure. However, is still more than 2m from the edge of the highway and is screened by hedgerows and buildings and does not affect the way in which the wall, as a whole, is viewed in the context of the adjacent highway. When taken in the round I am satisfied that the wall and gates should not be considered as 'adjacent to a highway used by vehicular traffic' on account of the degree of separation, the delineation in road surface, the presence of an intervening feature in the form of the flower beds, and the fact that the wall is set in line with the rear of neighbouring buildings.
10. The fact that the boundary is clearly visible when approaching from the west does not alter my conclusion in that regard. Given the nature of the site, the wall could be set a further 10 or 15 metres into the garden but would still be clearly visible from the approach to the west. If the relevant test was the degree of visibility many boundaries would be excluded from the terms of the GPDO. To my mind, whether a feature is visible or prominent is not the primary determining factor in assessing whether a feature is adjacent. The degree of visibility needs to be assessed alongside other factors. Although the wall is visible the degree of separation is also noticeable on the approach, as are the intervening flower beds.
11. Taking account of the above I conclude that the wall and gates are not adjacent to the vehicular highway in this case. Accordingly, the structure complies with the terms of Schedule 2, Part 2, Class A and benefits from planning permission granted by virtue of Article 3(1) of the GPDO. In view of that conclusion, the development does not amount to a breach of planning control.

Conclusion

12. For the reasons given above, I conclude that the appeals should succeed on ground (c) and, accordingly, the enforcement notice will be quashed. In these circumstances, Appeal A on ground (a) and Appeals A and B on ground (g) do not need to be considered.

Chris Preston

INSPECTOR