
Appeal Decision

Site Inspection on 15 July 2019

by Graham Self MA MSc FRTPI

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

Decision date: 29 July 2019

Appeal A: Reference: APP/P4605/C/18/3216987

Site at: 11A Driffold, Sutton Coldfield, Birmingham B73 6HE

- The appeal is made by Mr Lee Clarke under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by Birmingham City Council.
- The council's reference is 2018/1132/ENF.
- The notice is dated 6 November 2018.
- The breach of planning control alleged in the notice is: "Without planning permission, the erection of a front brick boundary wall in the approximate position marked in green on the attached plan".
- The requirements of the notice are:
 - "1. Demolish the front brick boundary wall and remove the demolished materials from the premises
 - Or
 - 2. Reduce the height of the front brick boundary wall to a height not exceeding 1 metre."
- The period for compliance is two months.
- The appeal is proceeding on ground (a) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. An application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal fails.

Ground (a) and Deemed Application

1. The dispute in this case is concerned mainly with the appearance and visual impact of the wall and its effect on the local scene, having regard to relevant planning policies.
2. The disputed wall has two parts, with curved sections on each side of the site entrance and the main length parallel to the road, set back slightly from the back edge of the pavement alongside the road. The main part of the wall is about 2 metres above the level of the ground at its base but measured from the adjacent pavement, the height is about 1.9 metres, or a little less than that where the pavement level slopes slightly. The pillars at the ends of each part of the wall are up to about 2.2 metres in height above pavement level.
3. The wall has apparently been built using reclaimed bricks. It has a band of blue bricks at around two-thirds of its height and end-facing bricks at the top. Its appearance looked at in isolation is quite attractive, and the objections which

have been raised to the wall relate more to its setting and the impact on the street scene caused by its height, rather than any of its design details.

4. This is the sort of case where planning policies only provide generalised guidance. One example is policy PG3 of the development plan for this area ("Birmingham Plan 2031"), which provides that all new development should contribute to "a strong sense of space....with design that responds to site conditions and the local area context....[and ensure that] streets....and public spaces are attractive, functional and inclusive". Similarly, the current National Planning Policy Framework refers to aims for good design and for improving the character and quality of an area. Such policies can be interpreted in different ways and it is largely a matter of judgment whether the development enforced against complies with these or other generalised policies.
5. As is pointed out in the written representations for the appellant, several properties in The Driffold are fronted by brick walls. These mostly appear to be old structures, except for a newer-looking wall at Westmead (3 The Driffold). They differ in height. At 8 The Driffold, on the opposite side of the road and a short distance to the north of the appeal site, there is a brick wall about 1.7 metres high above pavement level. Further north, there are brick walls on the opposite side of the road from the appeal site at Numbers 2 and 2A (about 1.75 metres at its highest) and Numbers 4 and 6 (up to about 1.65 metres high). At Westmead, on the same side of the road as the appeal site but further away at the far (north) end of the road, the front wall is mostly just under 1.8 metres high measured from adjacent pavement level, although at one point where the ground level drops and the wall is stepped, a very short length of the wall is about 1.95 metres above the pavement.
6. Taking into account the presence of other brick walls in the neighbourhood, I can see why the appellant considers that the wall at the appeal site does not have the harmful visual impact alleged by the council. The standard of construction is also undisputed. However, the properties in the immediate vicinity of the appeal site towards the south end of The Driffold are mostly fronted by low walls or hedging or other vegetation, which help to give this part of the street a less closely built-up urban character than would otherwise be the case. Most of the brick walls mentioned above are towards the north end of the street, and the south end has more soft landscaping.
7. The walls towards the north end of The Driffold referred to in the appellant's representations should not in my view be regarded as setting a precedent which should now be followed. This applies in particular to the wall in front of Westmead, where the brickwork has a plain appearance not in keeping with the immediate surroundings. It seems that this wall has either been permitted or has not been enforced against: either way, the council's case is thereby weakened, although it could be argued that the harmful impact of one development increases the importance of safeguarding the area from further such impact. Parts of the appellant's case are also weak - for example, his desire for privacy could be achieved by means which would be more in keeping with the character of this part of the street.
8. The wall at the appeal site is higher than other front walls in the vicinity, except for the short length of stepped wall at the far end of The Driffold mentioned above. The high pillars also add to the rather dominating effect of the disputed structure. The height and position of the wall would prevent any prospect of planting being established in a way which might help to make its visual impact more in keeping with other boundary features in the southern part of The Driffold.

9. Bearing in mind all the foregoing points, I judge on balance that the structure subject to the enforcement notice has gone beyond the threshold of acceptability, mainly because its height gives it an over-dominant and urbanising impact on the street scene in the southern part of The Driffold and detracts from the character of the immediate area, contrary to the aims of relevant planning policies. I conclude that planning permission should not be granted; so the appeal on ground (a) does not succeed.
10. I have considered whether there might be a possibility of a compromise allowing the wall to be reduced in height to a lesser extent than specified in the enforcement notice. However, ground (f) of Section 174(2) of the 1990 Act (which concerns the requirements of an enforcement notice) has not been pleaded and it is not for me to attempt to re-design the unauthorised development.

Formal Decision

11. I dismiss the appeal, refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act, and uphold the enforcement notice.

G F Self

Inspector