
Appeal Decision

Site visit made on 30 September 2019

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 8 October 2019

Appeal Ref: APP/F4410/C/19/3221622
23 Windsor Road, Doncaster, DN2 5BS

- 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 appeal is made by Mr Anthony Kerrigan against an enforcement notice issued by Doncaster Metropolitan Borough Council.
- The enforcement notice was issued on 21 December 2018.
- The breach of planning control as alleged in the notice is without planning permission, the demolition of the entire front boundary wall on the Land as shown in the attached photographs marked "pre development" and "post development".
- The requirement of the notice is to reinstate the front boundary wall in its former position. The wall to be of the same dimensions, style and appearance as the formal (sic) wall (For clarity as shown on attached photograph marked "pre development").
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Formal Decision

1. The appeal is allowed and the enforcement notice is quashed.

The appeal on ground (b)

2. Ground (b) is that the breach of control alleged in the notice has not taken place as a matter of fact. However, it is not disputed that the boundary wall in question has been demolished. The photographic evidence is clear on this matter. The appellant's argument that the works have not caused harm to the character and appearance of the conservation area is not relevant to this ground. The appeal on ground (b) fails.

The appeal on ground (c)

3. The appeal property is an end terraced dwelling situated within the Town Field Conservation Area. The appellant contends that the works of demolition were permitted development under Class C of Part 11 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 [GPDO], which permits *"Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure"*.
4. Development is not permitted by Class C if the demolition is *"relevant demolition"* for the purposes of section 196D of the Act. This is defined as

demolition of a building that is situated in a conservation area in England. The boundary wall would fall within the definition of a "building" in section 336 of the Act as including any structure or erection. However, an exception is made for demolition of buildings and structures set out in the Conservation Areas (application of section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990) Direction 2015; this includes any gate, fence, wall or other means of enclosure which is less than 1 metre high which abuts on a highway. Accordingly, the appeal on ground (c) turns on whether the demolished wall was less than 1m in height.

5. The appellant has provided photographs which show, using measuring rods, that the height of the similarly designed front boundary wall to the adjoining dwelling, no.21 Windsor Road, is less than 1m in height, when measured from the footway. This is consistent with the Council's measurement of the height of this wall as 980mm. The only evidence as to the height of the former wall to no.23 is the "pre development" photograph provided by the Council. This shows that the boundary wall to the appeal property was higher by 2 brick courses than the height of the neighbouring wall at no.21. On the basis of the Council's measurements, the additional 2 brick courses would have made the wall some 1150mm in height.
6. The appellant has disputed this measurement, believing the Council to have double counted one of the mortar beds, which should have reduced the figure to 1091.8mm, albeit that this is still above 1m, when measured from the footway. This appears plausible but the further doubt which is cast by the appellant on the Council's figures because of factors such as the likely use of shallower lime mortar beds would appear to have only a very marginal impact on this figure. A further suggestion that the wall cappings might have been shallower and that the actual height might have been as low as 969mm I find far from convincing. From the photographs, the wall was clearly higher than that remaining at no.21.
7. Turning to Article 2(2) of the GPDO, measurement of the height of a building is to be taken from the surface of the ground immediately adjacent to the building. Where the level of the surface of the ground is not uniform, the level of the highest part of the surface of the ground adjacent to it should be used. From the "pre development" photograph, the garden adjacent to the wall appears to have been higher by at least 3 brick courses than the outside footway level from which both parties' measurements were taken. This would have reduced the measured height of the wall by at least 250mm and would have resulted in its being less than a metre high, even if the Council's higher measurements in para.5 above are taken as correct. Accordingly, the demolition of the wall was permitted development and the appeal on ground (c) succeeds.

B.S. Rogers

Inspector