
Appeal Decision

Site visit made on 21 October 2019

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 1 November 2019

Appeal Ref: APP/C4615/C/19/3222502

20 Woodside Road, Dudley, West Midlands DY2 0UA

- 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 Fanshar Ali against an enforcement notice issued by Dudley Metropolitan Borough Council.
 - The enforcement notice was issued on 31 January 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last four years the erection on the Land or a perimeter wall ("the Perimeter Wall") over 1m high next to a footpath.
 - The requirements of the notice are: 1. To reduce the height of the Perimeter wall to 1m in height; 2. Remove from the Land all building material debris arising from compliance with step 1.
 - The period for compliance with the requirements is: Thirty (30) days after which this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) 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.
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Decision

1. The appeal is dismissed and enforcement notice is upheld.

Procedural Matter

2. As outlined above in the banner heading, the application for planning permission for the wall deemed to have been made under s177(5) of the 1990 Act has lapsed. Therefore, while the appellant has referred to numerous other high fences and walls in the area, I cannot have regard to those because that would involve considering planning merits which is an issue not before me.
3. In legal grounds of appeal, such as those under s174(2)(c) and (d) of the 1990 Act, the burden rests with the appellant to make out their case.

The ground (c) appeal

4. There is no case put forward that the works carried out do not constitute development as defined by s55 of the 1990 Act which requires planning permission under s57(1) of the Act. The appellant asserts that he did not need to apply for planning permission because the alleged breach of planning control was permitted development.

5. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Such development is not permitted if the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height. Based on the submitted evidence it seems that the former boundary wall has been subsumed into the rendered wall that is there now. I therefore take the view that the previous fence/wall has been altered.
6. The appellant's photographs show that there was a low brick wall with projecting brick columns at regular intervals around the front boundary. A former fence was on top of the main part of the wall. I acknowledge that, for the most part, the new blockwork mounted upon the old wall matched the height of the tallest part of the fence. However, between the first two columns closest to the path leading down to the front door of the house, the appellant's photograph clearly shows the fence there was lower. It matched the height of the brick columns. Another of the appellant's photographs shows that the new blockwork between these columns built up higher than that section of fence. Therefore, as a matter of fact, the perimeter wall exceeds its former height in breach of limitation A.1(c) of Class A, Part 2, Schedule 2 of the GPDO. This means that the wall does not have planning permission and in the absence of that, there has been a breach of planning control.
7. Furthermore, in any event, the metal spikes/screws on top of the wall put there for security purposes have increased the height of the wall/means of enclosure over its entire length in breach of the permitted development right.
8. The appellant has referred to the planning portal. That is only guidance and I must make my determination based on the law. However, in view of what I have found above, the guidance does not appear incorrect. A reference to building regulations has no relevance to this planning appeal.
9. For the reasons given, the ground (c) appeal cannot succeed.

The ground (d) appeal

10. S171B(1) of the 1990 Act specifies that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations on land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Given that the appellant only purchased 20 Woodside Road last year and subsequently carried out the works to the front wall, the operation clearly took place within the last four years. Consequently, the local planning authority was able to take enforcement action, which means the ground (d) appeal also fails.

Conclusion

11. I am aware that the appellant is concerned by certain actions of the Council. However, those are matters away from this appeal. For the reasons above, I conclude that the appeal should fail. I shall uphold the enforcement notice.

Gareth Symons

INSPECTOR