



Appeal Decision

Site visit made on 14 February 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 29 February 2020

Appeal Ref: APP/Z5630/C/19/3235503

240 Malden Road, New Malden KT3 6AR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Christine Peever of Sheldon Peever Studio against an enforcement notice issued by the Council of the Royal Borough of Kingston-upon-Thames.
- The enforcement notice was issued on 18 July 2019.
- The breach of planning control as alleged in the notice is without planning permission, the erection of:
 - i. a means of enclosure comprising a brick wall along the front (western) boundary, interspersed with metal fencing and two sets of gates ("the Front Enclosure");
 - ii. a side wall on the shared (northern) boundary with 238 Malden Road, New Malden, KT3 6AR ("the Side Enclosure");
 - iii. a side boundary wall adjacent to Wilton Grove (south);
 - iv. a front extension;
 - v. a canopy/lean-to extension to the rear of the Property.
- The requirements of the notice are:
 - a. In relation to the Front Enclosure (a) Either (i) demolish the Front Enclosure; or (ii) lower the Front Enclosure to no more than 1 metre high, and to no more than 0.6 metres high where it is located within 2m of the vehicle crossover;
 - b. In relation to the Side Enclosure (b) demolish, or lower to no more than 0.6m high, the first 1.5m of the wall measured back from the front Property boundary; and
 - c. (c) remove from the Property all resultant debris arising from compliance with steps 5(a) and 5(b) above.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 Act as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellant indicates that the matters alleged in the enforcement notice have planning permission by virtue of an approval dated 2 April 2015 for extensions to the property (Ref 15/14150/HOU). A landscaping plan is listed on the decision notice as one of the approved plans, although there is no plan reference provided. The landscaping plan shows the location of the proposed new walls along the front boundary and the side boundary with Wilton Grove. There is an elevation included, but this appears to be indicative as it does not cover the whole stretch of the boundary treatment proposed.

2. I am not satisfied that this plan shows the matters alleged have approval. The lack of a specified plan reference on the decision notice introduces uncertainty. Moreover, the details of the boundary treatment are incomplete and do not cover the extent of the wall as built.

The appeal on ground (a) and the deemed planning application

Main Issues

3. The terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for all the matters specified in the allegation. However, the Council is 'under-enforcing' as the requirements of the notice are limited to the Front and Side enclosures. Therefore, I have confined my consideration of the ground (a) appeal to those matters.
4. For the avoidance of doubt, the development before me is that which existed at the date of the notice. I note the appellant has offered an alternative proposal. As there is an appeal on ground (a) and an associated deemed planning application, it is appropriate for me to consider the alternative proposed and whether this would overcome the Council's objections to the development.
5. The main issues are (i) the effect of the Front Enclosure on the character and appearance of the area and (ii) the effect of the Front and Side enclosures on highway safety.

Reasons

Character and appearance

6. The appeal property is an extended detached dwelling situated on a relatively busy road, within a residential area. A front enclosure has been built along the boundary with Malden Road comprising a brick wall with supporting piers, topped with decorative finials or lights, and metal railings. There are two vehicular access points, both secured by metal gates of a design to match the railings.
7. The front enclosure is visible in the street scene due to its siting at the rear of the footway. It is a prominent structure due to its height and design, especially when viewed in the context of No 238, which has a low front wall. However, I saw numerous other front boundaries of varying height and design in the immediate vicinity. Front walls with piers are not uncommon along this stretch of Malden Road and form part of the character of the area. As such, the development at the appeal site does not stand out as an incongruous feature nor is it incompatible in the street scene. In addition, the use of brick complements the host building.
8. To conclude on this matter, I find that the Front Enclosure does not have an adverse effect on the character and appearance of the area. It accords with Policies CS8 and DM10 of the Core Strategy (April 2012) and Policy Guidance 44 of the Council's Residential Design: Supplementary Planning Document (July 2013)(the SPD), which seek to secure good design, in particular to ensure walls and enclosures respect the form and detail of other similar features in the area, while complementing the host building and the wider street scene.

Highway Safety

9. The Council is concerned that the development provides insufficient visibility due to the height and design of the front and side enclosures. The dimensions of the required visibility splay are not provided, however, I saw from my site visit that the footway enables adequate vehicular visibility in both directions for vehicles exiting the site to join the carriageway.
10. Pedestrian visibility is more limited due to the height of the walls. The appellant has offered an alternative scheme which would include lowering the height of the brick boundary wall to the front to a maximum of 600mm for a distance of 3m from the [northern] vehicle entrance and lowering the side boundary wall with No 238 to 600mm for 1.6m from the front boundary. The opaque backing to the railings and gates would also be removed. This would create a pedestrian visibility splay at the northern access, which I consider would address the concerns raised.
11. I note the additional concerns about vehicles waiting to turn into the site, and the potential for this interrupt the free flow of traffic. However, the levels of traffic seeking to access the property are likely to be very low. I do not consider there would be a material impact on highway safety in consequence of such manoeuvres. In any event, there is no evidence to show that the situation at the appeal site would be any worse than the other properties with gates in the vicinity.
12. I conclude on this matter that the proposed alternative scheme would address the concerns raised about visibility. The implementation of the alternative could be secured through a suitably worded planning condition. Hence, I am satisfied that the Front and Side enclosures would not have an adverse effect on highway safety, in accordance with Policy DM10 of the Core Strategy and the SPD which, among other things, seek to protect highway safety and ensure adequate visibility for pedestrians and vehicles.

Other Matters

13. I have considered the further concerns raised by interested people, including that the development should be removed as it is unauthorised. However, the enforcement regime is remedial and not punitive. A breach of planning control alone does not justify upholding the notice if an alternative can be secured to overcome the Council's objections.
14. It appears that the appellant may be in breach of a restrictive covenant at the property relating to the height of the front wall. However, this is not a matter for me to take into account in the context of a planning appeal under section 174 of the 1990 Act as amended. This consideration carries very limited weight, therefore.

Conclusion

15. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted, subject to a condition. The condition is necessary to secure the implementation of the alternative proposal, which is required to address the concerns regarding pedestrian visibility.
16. The appeal on grounds (f) and (g) does not therefore need to be considered.

Formal Decision

17. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of:

- i a means of enclosure comprising a brick wall along the front (western) boundary, interspersed with metal fencing and two sets of gates ("the Front Enclosure");
- ii a side wall on the shared (northern) boundary with 238 Malden Road, New Malden, KT3 6AR ("the Side Enclosure");
- iii a side boundary wall adjacent to Wilton Grove (south);
- iv a front extension;
- v a canopy/lean-to extension to the rear of the Property;

at land at 240 Malden Road, New Malden KT3 6AR referred to in the notice, and subject to the following condition:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: "Proposed Elevation of Front Garden Wall" and "Proposed Plan of Front Garden Wall".

Unless the approved scheme is implemented within two months of the date of this decision, the Front and Side Enclosures hereby approved shall be demolished or, in relation to the Front Enclosure, lowered to no more than 0.6 metres high where it is located within 2m of the northern vehicle crossover; and, in relation to the Side Enclosure, lowered to no more than 0.6m high for the first 1.5m of the wall measured back from the front Property boundary.

The visibility splay shall be retained thereafter.

In the event of a legal challenge to this decision, the operation of the time limit specified in this condition will be suspended until that legal challenge has been finally determined.

Debbie Moore

Inspector