
Appeal Decision

Site visit made on 10 December 2019

By- E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Appeal Ref: APP/B0230/C/19/3224857

40 Kingsdown Avenue, Luton, Bedfordshire LU2 7BU

- 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 M.P. Miah against an enforcement notice issued by Luton Borough Council.
 - The enforcement notice was issued on 27 February 2019.
 - The breach of planning control alleged in the notice is: Without planning permission, the erection of a boundary wall along the north and west boundaries of the land ("the Boundary Wall").
 - The requirements of the notice are:
 - (i) Demolish the Boundary Wall
 - (ii) Remove all associated building materials and rubble and waste materials arising from compliance with step (i) above from the Land.
 - The period for compliance with the requirements is one calendar month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a)(f)(g) of the Town and Country Planning Act 1990 as amended. Since an application has been brought under ground (a), an application for planning permission is deemed to have been made under Section 177(5) of the Act.
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Decision

1. The enforcement notice is varied by;
 - 1) deleting 1 calendar month and substituting two months from Paragraph 6 of the notice; and
 - 2) deleting Paragraph 5 of the notice and substituting the following;
5.WHAT YOU ARE REQUIRE TO DO
 - (i) Demolish the Boundary Wall
 - (ii) OR reduce the Boundary Wall erected adjacent to the highway to 1 metre in height above ground level
 - (iii) Remove all associated building materials and rubble and waste materials arising from compliance with steps (i) and (ii) above from the Land.
2. Subject to these variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

3. A previous appeal decision¹ for planning permission to retain and extend a 2.5 metre side boundary wall was dismissed on the 12 December 2018. As the appeal decision related to the same side boundary wall that forms part of the subject of this appeal, I have had regard to it in reaching my decision.

The Appeal on Ground (a) and the Deemed Planning Application

4. The main issue is the effect of the development on the character and appearance of the area.

Reasons

5. The appeal dwelling is a detached bungalow located on the corner of Kingsdown Avenue and Marston Gardens but fronting onto Kingsdown Avenue. The brick boundary wall, the subject of the notice, is made up of a side wall which faces onto Marston Gardens and a lower section of wall that is to the front of the appeal dwelling with gaps for access to the path to the front door and vehicular access. The wall is largely one continuous wall of differing heights with the highest section of the wall being around 2.4 metres and land levels fall away towards Marston Gardens.
6. Surrounding boundary treatments on both roads are largely open plan and where boundary walls exist they are generally low level. With regard to the side wall, the previous planning Inspector found that "the height and materials of the solid wall nevertheless creates a very prominent and dominating feature in the streetscene. As constructed, the development appears overly dominant and detracts from the more open character and appearance of the street scene and wider area". I do not disagree with that view. The corner location and the length of the side wall also add to the overall impact on the street scene.
7. The appellant refers to development at 229 Old Bedford Road (No 229) which is a corner plot further along Kingsdown Avenue that fronts onto the main road of Old Bedford Road as having similar characteristics to the appeal site. It is not disputed that the boundary walls at No 229 have been built higher than the approved level of 1.8 metres. However, the Council indicates that the walls are now immune from enforcement action and the height of those walls are not representative of the boundary treatments in the vicinity of the appeal site. I also observed from my site visit that the dwelling at No 229 is a substantial dwelling and the boundary walls have insets of railings. The design and location of the development at No 229 are therefore not directly comparable to the appeal site where the walls are solid and overwhelm both the appeal dwelling which is a modest bungalow and the prevailing character of boundary treatments in the surrounding area.
8. A second appeal decision² which included a reduction in height to around 2 metres to the side wall was dismissed on the 14 May 2019. The appellant had suggested that if 2 metres was not allowed that he be granted planning permission for what he understands was given approval at 229 Old Bedford Road which is said to be a 1.8 metre wall with 2.1 metre high pillars. However, for the reasons previously given, I do not consider the two sites to be comparable. I also share the Council's concern that such a reduction whilst

¹ APP/B0230/D/18/3213943

² APP/B0230/D/19/3224353

- retaining the existing materials would not address the over dominant and incongruous appearance of the development.
9. The appellant considers that the side wall is not disproportionate to the side wall to the adjoining property on Marston Gardens. However, the side wall at Marston Gardens is less prominent, shorter in length and is not facing onto the highway.
 10. The front section of wall is just under 1 metre in height although the piers are taller and are of differing heights with the piers either side of the vehicular access being the tallest at around 1.7 metres. The different heights of the piers, their height in comparison to the wall element and lack of overall symmetry with both the side section of the Boundary Wall and boundary treatments in the surrounding area is out of keeping particularly when the next door dwelling on Kingsdown Avenue has a largely open frontage with a low wall to the front garden. The prevailing character of boundary walls to the front of surrounding properties is of low walls with modest pier elements where they exist.
 11. The appellant has referred to an improved protective boundary, enhanced family amenity space and tidying a corner plot. However, as indicated in the first appeal decision, improved security could be achieved through less visually intrusive measures. Alternative boundary treatments could also enhance family space as shown on the street view image produced by the appellant of the original lower boundary wall with a hedge. I do not therefore share the appellant's view that the development is a positive addition and these matters either individually or collectively do not alter my findings.
 12. The development is over dominant due to its scale and massing and is therefore contrary to Policy LLP1 of the Luton Local Plan (2011-2031) 2017 (the Local Plan) which requires development to preserve or improve and respond to the character of the area. It is also contrary to Policy LL25 of the Local Plan which refers to responding positively to the street scene and the National Planning Policy Framework which refers to refusing development which does not take opportunities for improving the character and quality of an area.

The appeal under ground (f)

13. It is necessary to consider whether the steps required by the notice exceed what is necessary to remedy the breach of planning control. The remedial nature of the notice indicates that the Council seeks to remedy the breach by restoring the land to its condition before the breach occurred. However, the Council states that it would agree to the notice being amended to allow the Boundary Wall to be reduced in height to 1 metre. The appellants request to reduce the fence to 1.8 metres has been addressed under ground (a) above.
14. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grant deemed planning permission for a means of enclosure adjacent to a highway used by vehicular traffic at a height of 1 metre. It is, in my view, reasonable to insert the alternative requirement to reduce the overall height of the Boundary Wall which would meet the purposes set out in Section 173(4) which include to remedy the breach of planning control.

15. In conclusion, the requirement to remove the entire wall is not excessive. However, the alternative step of a reduction to 1 metre for all of the Boundary Wall referred to by the appellant and agreed by the Council causing no injustice is caused to any party by including it. I shall vary the notice accordingly.

The appeal under ground (g)

16. The appellant argues that the compliance period of one month is insufficient to obtain quotes instruct a contractor and execute works and has asked for a period of two months to remove the upper courses of the walls. I accept that one month is not particularly long and consider that two months would allow time to obtain quotes, appoint a contractor and carry out the works. The appeal therefore succeeds on ground (g) and I shall vary the notice accordingly.

Conclusion

17. The appeal on ground (g) succeeds and the appeal under ground (f) succeeds in adding a lesser alternative. However, the appeal on ground (a) fails and I shall refuse planning permission on the deemed application and uphold the notice as varied.

E. Griffin

INSPECTOR