



Appeal Decisions

Site visit made on 23 May 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2020

Appeal A Ref: APP/M4320/C/20/3248228

41A Altcar Road, Formby, Liverpool L37 8DS

- 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 Lee Fagan against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 14 February 2020.
- The breach of planning control as alleged in the notice is erection of a wall to front boundary of property in excess of 1 metre in height.
- The requirements of the notice are:
 1. Remove the wall from the propertyOR
 2. Reduce the height of the wall so that it complies with Permitted Development rights
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)[a] and [g] of the Town and Country Planning Act 1990 as amended.

Summary of Decision : The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Appeal B Ref: APP/M4320/D/20/3244757

41A Altcar Road, Formby, Liverpool L37 8DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Lee Fagan against the decision of Sefton Metropolitan Borough Council.
- The application Ref DC/2019/01748, dated 1 September 2019, was refused by notice dated 19 December 2019.
- The development proposed is boundary wall to front of property.

Summary of Decision : The appeal is dismissed.

Matters concerning the notice

1. The requirements of the Enforcement Notice are written in the alternative. Whilst I consider it acceptable to give the appellant the choice to reduce the wall so that it complies with the Town and Country (General Permitted Development) Order 2015 (as amended)(the 'GPDO'), it is essential that the requirements are clear.
2. Schedule 2, Part 1, Class A. Part 2, Class A permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Development is not permitted by Class A if – (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a

highway used by vehicular traffic would, after the carrying out of the development, exceed – (ii) in any other case, 1 metre above ground level.

3. From the enforcement notice and the Council's evidence, it is clear that the Council is concerned that the wall exceeds 1m in height, which is the height which would be permitted by the GPDO. I therefore consider there would be no injustice in amending the requirements, so that it is clear to what height the appellant is required to reduce the wall to.

The appeals on ground (a) and the section 78 appeal – Appeals A and B

Main Issue

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

Reasons

5. The appeal site is located in a residential area with a mixture of dwellings types set back from the main road. Although I saw a variety of different boundary treatments, the area typically comprises a mixture of low-level brick walls, fencing and hedgerows. The use of hedgerows and low-level brick walls provides a sense of space and verdant character which is typical of the area.
6. The appeal site comprises a two-storey detached property which sits in a generous plot and fronts onto Altcar Road, a road which appeared well-used despite travel restrictions due to Covid-19 at the time of my visit. The property is located in a prominent position near the junction with Alt Road and is not within a conservation area or landscape designation.
7. The wall is rendered, with pillars and was mostly painted white, with only the end pillar unpainted. A gate is proposed in the submitted plan¹, however, no gate was present at the time of my site visit. The wall is directly adjacent to the footpath and appears a bulky, dominant feature as a result of its height and massing. The length and position of the wall, adjacent to the footway, presents a largely enclosed frontage to pedestrians, which contrasts with the more open and verdant frontages which are typical of the area.
8. Policy EQ2 of the Sefton Local Plan (SLP)(2017) seeks to ensure that development make a positive contribution to its surrounding through the quality of its design in terms of scale, height, form, massing, style, detailing and landscaping, amongst other things. Neighbourhood Plan Policy ESD2 High Quality Design: Formby & Little Altcar Neighbourhood Development Plan (NDP) 2012 to 2030 also seeks to ensure that development makes a positive contribution to local character and states that proposals should, amongst other things, retain or create good quality boundary and gateway features.
9. House Extensions Supplementary Planning Document (HESPD)(June 2018) Paragraph 9.1a) seeks to ensure that a wall or a fence does not detract from the appearance of an area and should be consistent with the design of other boundaries in the area. Paragraph 127 of the National Planning Policy Framework (2019)(the 'Framework') seeks to ensure that developments are sympathetic to local character and history, including the surrounding built

¹ Drawing number A101

environment and landscape setting, while not preventing or discouraging appropriate innovation or change.

10. The appellant has provided photographs of the previous wall that was *in situ*, a red brick wall with metal railings above and pillars. From the photograph evidence provided by the appellant the previous wall does not appear as high as the appeal scheme before me and the metal railings afford a sense of space which the appeal scheme does not. Moreover, the wall has been removed and is therefore not a relevant fallback position.
11. The appellant has drawn my attention to a number of examples along Altcar Road where boundary treatments exceed 1m in height, No 41, 43, 49 and 79. I saw that the adjacent property, No 41 Altcar Road, has a wooden fence of a similar height as the wall. However, the Council advise that this does not have the benefit of planning permission.
12. Whilst I acknowledge that there are examples of boundary treatments which exceed 1m in height along Altcar Road, I do not consider the examples cited by the appellant to be comparable to the appeal scheme. The examples cited comprise fencing and/or brickwork which is more characteristic of the area rather than render, and with the exception of No 79, which is in a less prominent position compared to the appeal site, are lower than the appeal scheme. Furthermore, I am obliged to consider the appeal scheme on its own merits.
13. The appellant has drawn my attention to paragraph 127 of the Framework which states that decisions should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience. I acknowledge that the wall provides a degree of privacy and security. However, I am not persuaded that the appeal scheme is the only means of securing the premises and therefore afford this matter very limited weight.
14. Whilst the rendered wall is in keeping with the exterior finish of the dwelling, it is not in keeping with the design and style of other boundary treatments in the area. Due to the height and bulk of the wall, its prominent location and close proximity to the highway, the wall appears a dominant, visually intrusive feature which diminishes the character and appearance of the area, contrary to Policy EQ2 of the SLP, Policy ESD2 of the NDP, and the HESPD, the requirements of which are set out above.

Other Matters

15. The Council has cited Policy HC4 of the SLP, however, this relates to extensions and alterations to dwelling houses, as well as houses in multiple occupation and flats and is therefore not directly relevant to the appeal before me which relates to the erection of a wall.

Conclusion on ground (a) and the section 78 appeal

16. The appellant resides at the appeal premises and asserts that the appeal scheme ensures that he can maintain the quality of his life through the provision of a safe and secure frontage and that this would safeguard his rights for respect to his private and family life and home under Article 8 of the Human

Rights Act 1998. Having regard to the legitimate and well-established planning policy aims to protect the character and appearance of an area, in this case I consider that greater weight attaches to the public interest. Dismissal of the appeal is therefore necessary and proportionate and would not result in a violation of the human rights of the appellant.

17. The appellant has drawn my attention to paragraph 11 of the Framework and states that there are no significant adverse impacts that would outweigh the presumption in favour of sustainable development. However, I have no substantive evidence that the development plan or the policies which are most important for determining the application are out of date. For the reasons given above I have found that the proposal conflicts with the development plan. As such, the appeal scheme cannot benefit from the presumption in favour of sustainable development.
18. For the reasons given above, and having regard to all matters raised, I conclude that the proposal would conflict with the development plan. There are no other material considerations that outweigh that conflict. I therefore conclude that the appeal on ground (a) should fail and the section 78 appeal should be dismissed.

Ground (g)

19. An appeal on ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant submits that 2 months is too short because a contractor would need to dismantle the wall, as well as obtain the relevant funds to engage a contractor. The appellant advises that a reasonable period for compliance would be 6 months. The Council confirm that it would have no objections to an extension of time to 6 months.
20. Since the appeal was lodged, the Covid-19 outbreak has had a profound effect on all areas of life in the UK. In light of this, and in light of the Council's comments, I agree that a reasonable period for compliance would be 6 months. I shall therefore vary the terms of the enforcement notice accordingly. In this respect, therefore, the appeal on ground (g) succeeds.

Conclusion

21. For the reasons given above I conclude that a reasonable period for compliance would be six months. The appeal under ground (g) succeeds to that extent. I shall vary the enforcement notice in respect of the time period for compliance and amend the requirements, so that it is clear to what height the appellant is required to reduce the wall to but, subject to these corrections and variations, the appeal shall be dismissed and the enforcement notice upheld.

Appeal A Ref: APP/M4320/C/20/3248228 Decision

22. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion of '2' months in relation to the time period for compliance at section 5 and the replacement with '6' months as the period for compliance.
23. It is directed that the enforcement notice is corrected at section 5 (2) by the deletion of 'so that it complies with Permitted Development rights' and the replacement with 'to no more than 1 metre in height in order to comply with

the requirements of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)'.

24. Subject to these variations and corrections, the appeal is dismissed and 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.

Appeal B Ref: APP/M4320/D/20/3244757 Decision

25. The appeal is dismissed.

M Savage

INSPECTOR