



Appeal Decision

Site visit made on 16 June 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2020

Appeal Ref: APP/W4223/C/19/3238445

197 Broadway, Chadderton

- 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 Mohammad Bilal Khan against an enforcement notice issued by Oldham Metropolitan Borough Council.
- The enforcement notice was issued on 2 September 2019.
- The breach of planning control as alleged in the notice is the erection on the land of a boundary wall over 1 metre in height adjacent to a highway used by vehicular traffic.
- The requirements of the notice are:
 1. Permanently remove the wall from the land; or
 2. Reduce the height of the wall to 1 metre in height; or
 3. Apply for planning permission to keep the wall at its current height.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the ground set out in section 174(2)(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.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

The appeal on ground (c)

1. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The erection of a wall comprises operational development within the meaning of s55 of the Act, for which s57 indicates planning permission is required. Schedule 2 Part 2 Class A of the GPDO relates to 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 it is constructed adjacent to a highway used by vehicular traffic and the height would exceed 1 metre above ground level.
2. The height of the wall is in excess of 1 metre and therefore this appeal turns on whether or not it is adjacent to a highway used by vehicular traffic. The word 'adjacent' is not defined in the Planning Act and the courts have held that legislators were not likely to have intended there to be a 'one size fits all approach'. Case Law also clarifies that adjacent does not necessarily equate to something being 'contiguous' or 'abutting'. Consequently, the position established by the courts is that the word 'adjacent' does not necessarily mean that the wall in question has to be abutting or touching the highway. Indeed in the case of *'Simmonds v SSE and Rochdale MDC [1981]'* it was held that a fence higher than one metre and less than one metre from a footway to a

highway did about the highway. It is clear to me that each situation has to be considered on its merits and a planning judgement needs to be made in each case.

3. Having seen the appeal site I noted that the wall to which the enforcement notice relates is separated from the edge of the pavement which forms part of the highway by verges containing well-maintained grass and mature trees. The evidence shows that the verge areas in question are maintained by the Council. The verges have a significant role in contributing positively to the character and appearance of the area, defining the separation between the public realm and private gardens. The Council also argues that the land between the edge of the footway and the garden wall performs a function as an integral part of the visual interpretation of the street. I am not persuaded that these arguments are conclusive with respect to defining the adjacency of the wall to the highway.
4. I noted on site that the wall facing Fold Green is approximately 3.4 metres from the edge of the footway and the wall facing Broadway is approximately 5.4 metres from the edge of the footway. Therefore, although I understand that adjacent does not necessarily mean abutting or touching the highway, in this particular case and in these specific circumstances it is my judgement that the wall has been constructed in a location which is not adjacent to the highway but rather is adjacent to a landscaped verge which is itself adjacent to the highway. Therefore, a breach of planning control has not occurred and therefore the appeal on ground (c) succeeds.

Conclusion

5. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly, I direct that the enforcement notice is quashed

Formal Decision

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

A A Phillips

INSPECTOR