



Appeal Decision

Site visit made on 6 July 2020

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal Ref: APP/W4705/C/19/3240348

22 Plumpton Mead, Bradford BD2 1NF

- 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 Miss Holly Marcantonio against an enforcement notice issued by the City of Bradford Metropolitan District Council.
 - The enforcement notice was issued on 19 September 2019.
 - The breaches of planning control as alleged in the notice are:
 1. The erection of walling along the south and west boundaries of the land which exceeds one metre in height adjacent to a highway used by vehicular traffic.
 2. The erection of fencing along the north facing boundary of the land which exceeds one metre in height adjacent to a highway used by vehicular traffic and;
 3. The hard surfacing of the front garden area of the land with non-porous material with no provision to direct run-off water within the curtilage of the dwelling house.
 - The requirements of the notice are:
 - 1a. Remove the unauthorised walling and fencing from the south and west facing boundaries of the land.
OR
 - 1b. Reduce the height of the walling on the west facing boundary of the land to a height of 1.0 metre or less.AND
 - 1c. Reduce the first 1 metre of the walling and fencing along the north and south boundaries of the land to a height of 1.0 metre or less.
 2. Remove the unauthorised non-porous hard surfacing material from the front garden area of the land.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

The Appeal Site

2. No.22 Plumpton Mead is a semi-detached bungalow on the east side of the road. The wall in question has 2 components, firstly, a stretch that flanks the pavement to the north of No.22's driveway, and, secondly, a section on the south side of No.22's driveway that runs along the boundary between the property and No.20. Most of the wall is about 90cm high, but it is interspersed at intervals by columns about 1.8m high, including one on each side of the entrance to No.22's driveway. The fence in question runs along the site's northern boundary and comprises wooden panels topped with trellis, which are

also about 1.8m high. The driveway and the rest of the area in front of No.22, save for a strip on the inside of the fence where some laurel bushes have been planted, has been hard-surfaced.

Appeal on Ground (c)

3. In order for the appeal to succeed on this ground it has to be shown that the matters alleged in the notice do not constitute a breach of planning control. Ground (c) is a legal ground of appeal, distinct from any planning merits, and the Courts have held that the onus on proving it lies with the appellant.
4. The appellant's submissions focus largely upon dealings with Council officers, advice given by builders, and the conduct of certain neighbours. Given the position the appellant and her partner, who has also commented on the case, now find themselves in, I can fully appreciate why the experience has proved both stressful and perplexing to them. That said though, none of the matters raised expressly go to the heart of the appeal on ground (c) and so I am unable to attach much weight to them in this respect.
5. The works alleged in the notice all fall within the definition of development set out in section 55 of the 1990 Act. Under the provisions of The Town and Country (General Permitted Development) (England) Order 2015 (GPDO), certain forms of development are deemed to be 'permitted development' whereby no express planning permission is required. However, in this particular instance, I do not consider any of the works in question constitute permitted development.
6. The GPDO deals with fences and walls in Schedule 2 Part 2 Class A. Under condition A.1(a)(ii) where such development is erected or constructed adjacent to a highway used by vehicular traffic, it is not permitted by Class A if its height exceeds 1 metre above ground level. While a good deal of the front wall is less than 1m high, the various columns that form part of the structure, and the stretch of boundary fence that joins the wall, are all more than 1m high and so do not constitute permitted development.
7. Neither the northern boundary fence nor the southern boundary wall border onto the road, but it has been established through the courts that the word "adjacent" does not mean that such features necessarily have to abut or touch the highway in order to be caught by condition A.1(a)(ii). As a matter of fact and degree therefore, I consider it reasonable to regard the stretches of boundary wall and fence closest to the road, namely the parts to which requirement 1 is directed, as being adjacent to the road and so are not permitted development either.
8. Schedule 2 Part 1 Class F of the GPDO is directed at 'hard surfaces incidental to the enjoyment of a dwellinghouse'. Condition F.2 notes that development is not permitted by this Class where "(a) the hard surface would be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway, and (b) the area of ground covered by the hard surface, or the area of hard surface replaced would exceed 5 square metres, either the hard surface is made of porous materials or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse."

9. Most of the hard surfaced area in question lies between what I would regard as the principal elevation of No.22, namely the part of the dwelling that faces onto Plumpton Mead and the highway. And, although the parties have not indicated what the dimensions of the hard-surfaced area are, I am satisfied from my visual inspection of it, that its area exceeds 5m². It has not been claimed otherwise, nor is it claimed that the surface is made from porous materials – my impression was that this is not the case.
10. Although reference is made to a suggestion that water should drain into a flower bed, the appellant has not made it clear whether such a measure, or any other device, to ensure that run-off from the hard surface can be accommodated within the bounds of the property has actually been implemented. For instance, while I noted the presence of what appeared to be a drainage gulley across the end of a neighbour's drive, I was unable to discern any comparable features at the appeal property.
11. I appreciate that the ground conditions that have been described may make the disposal of surface run-off water difficult. But neither this, nor the submission that other new driveways in the area lack drainage, mean that the development should be regarded as being in accord with Schedule 2 Part 1 Class F of the GPDO. In other words, I am not satisfied that the hard surfacing in question has been shown to be permitted development either.
12. In the apparent absence of any relevant planning permission, I find the matters alleged in the notice do constitute a breach of planning control. Accordingly, therefore, the appeal on ground (c) fails.

Appeal on Ground (f)

13. I am unable to identify anything in the appellant's submissions that expressly addresses the appeal on this ground. As I see it, the requirements of the notice represent a reasonable response to the breaches of planning control alleged in it¹. I do not find them excessive. The appeal on ground (f) therefore fails.

Other Matters

14. I have taken into account all the other matters raised, including the expressions of support for the development in question from some of the neighbours. None, however, are sufficient to outweigh the considerations that have led me to my conclusions.

D H Brier

Inspector

¹ The Council have clarified that requirement 2 relates to the hard surfacing in the front garden only, i.e. that forward of the front elevation of the dwelling house.