



Appeal Decision

Site visit made on 16 June 2020

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2020

Appeal Ref: APP/Q4625/C/18/3206027

282 Ralph Road, Solihull, West Midlands B90 3LF

- 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 Fenez Khan against an enforcement notice issued by Solihull Metropolitan Borough Council.
 - The enforcement notice was issued on 23 May 2018.
 - The breach of planning control as alleged in the notice is without planning permission the erection adjacent to a highway used by vehicular traffic of a boundary wall, pillars, railings and gates to a height of over 1 metre in the approximate position shown with a blue line on the attached plan.
 - The requirements of the notice are:
 1. Dismantle, demolish and/or take down the boundary wall, pillars, railings and gates in the approximate position shown with a blue line on the attached plan.
 2. Remove all materials created by the carrying out of step 1 above from the property.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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Decision

1. It is directed that the enforcement notice be varied by inserting, in the section entitled "What you are required to do" and immediately after step 2. "Remove all materials created by the carrying out of step 1 above from the property", the following:

"OR 3. Reduce the height of the boundary wall, pillars, railings and gates so that no part exceeds 1m above ground level."
2. Subject to this variation the appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act.

Background

3. A retrospective planning application, ref. PL/2017/00172/MINFHO for retention of a boundary wall and railings to a height of 1.8 metres and gates to a height of 2.3 metres was refused by the Council on 7 April 2017. A subsequent appeal was dismissed in March 2018 under ref APP/Q4625/D/17/3179144.

The ground (c) appeal

4. In an appeal on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged matters stated in the notice did not constitute a breach of planning control.
5. I take the appellant's arguments to be that the structure does not comprise 'development' within the meaning of section 55 of the Act, or alternatively, if it is 'development', that it falls within one of the classes of permitted development within the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
6. Section 55(1) of the 1990 Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
7. For the purposes of this Act "building operations" are defined as including (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder.
8. The works which are the subject of the allegation form a structure which is physically attached to the ground. The development provides a physical barrier that has remained in the same position for some time. Consequently, taking into account the evidence before me, I am satisfied that, as a matter of fact and degree, the boundary wall, pillars, railings and gates comprise a physical alteration to the land of sufficient permanence that they constitute "building operations" for the purposes of section 55(1)(a) of the 1990 Act
9. Section 55(2)(a)(ii) of the 1990 Act contains a specific exclusion which is the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building. The appellant claims the works amount to "maintenance and improvement" of the existing boundary wall which was, according to the appellant, in a poor condition. The appellant does not detail the precise scope of the works, and in the face of what is apparently an altogether new structure, I am unable to find that the appellant has discharged this burden of proof.
10. Turning now to the GPDO. Development is not permitted by Class A(1)(a) if the height of any gate, fence, wall or means of enclosure adjacent to a highway used by vehicular traffic would exceed 1 metre above ground level. The boundary wall, pillars, railings and gates are set back from the carriageway behind the footway and a grass verge, all of which form part of the highway, being a defined route over which the public can pass. Even if the wall to the front does not exceed the height of 1 metre, it is physically attached to and forms part of the structure which exceeds 1m in height.
11. Consequently, I find that the development does not constitute development permitted by Class A of Part 2 of Schedule 2 of the GPDO. Planning permission for it is not therefore granted by virtue of Article 3 of the GPDO. I conclude that the alleged breach does constitute a breach of planning control.
12. The appeal on ground (c) therefore fails.

The ground (a) and the deemed planning application

Main Issue

13. This is the effect of the development on the character and appearance of the street scene.

Reasons

14. The front boundary to No. 282 comprises a low level boundary wall, behind which are metal railings and gates supported by four tall brick pillars. The development extends the width of the property curtilage. A gateway to one side, provides access for vehicles and this is balanced by a similar gateway to the other side, for aesthetic purposes. Both gates are taller than the connecting railings and their arch form raises the highest section of the railings to approximately 2.22 metres. The measurements are provided on "Elevational Drawing 1" dated 14/02/17 provided by the appellant and are comparable to that which I saw on my site visit.
15. There is subtle variety in the design and appearance of properties in the locality, although a principal feature which characterises the area is the predominantly open frontages displaying lawns and hardstanding areas for parking. Dwellings are set back from the road with boundaries to the front defined by low brick walls, some with hedgerow over and some with low level planting. I also saw examples of open frontages with no formal boundaries between the houses and the highway. These elements give the immediate area an informal and distinctly open nature.
16. The Council's SPD suggests that boundary treatments should "normally follow the height, style and facing materials within the streetscene to avoid introducing a prominent, hard landscaping feature especially in areas characterised by an open plan layout". It goes on to say that "particular care is also needed when proposing side garden walls/fences on corner plots in order to avoid over prominence within the streetscene".
17. The appeal site, which sits within the opening of the cul-de-sac, is set back from the road with a tree-planted grassed area and footway between. The frontage treatment is ornate, contrasting greatly with the relatively simple low-level boundary treatments within its immediate setting. The height, design and style of the railings and gates create a defensive and hostile boundary which contrasts with other frontages in the area. The development provides a greater sense of enclosure to the dwelling than neighbouring properties, which is at odds with the established generally open frontages that characterise both the immediate and wider area.
18. The frontage development introduces an incongruously formal feature, built of materials that are not common-place, which is considered highly conspicuous and discordant in a prominent setting within the street scene. It is at odds with, and detracts from, the open setting of the adjacent residential properties. The property frontage is particularly prominent from within the cul-de-sac and when turning into Ralph Road from Prospect Lane from where it draws unwarranted attention.
19. I acknowledge that there are examples within the area of boundaries defined by tall hedgerows, close boarded fencing and metal railings and at my site visit I observed the examples to which my attention has been drawn. I particularly

noted the corner property 92 Prospect Lane, at the entrance to Ralph Road, which is enclosed by a high close boarded fence with a substantial tall hedge behind, similar to the property on the opposite side of the road. However, these boundaries mostly enclose the side and rear gardens to the properties, rather than frontages, providing an appropriate element of security and seclusion for a private space and garden area.

20. The many other examples brought to my attention displayed various arrangements and styles of boundary treatments, some more appropriate to their setting than others. However, these properties are located within the wider area and relate to settings where the character of frontages is more varied. As such, they are not considered immediately comparable to the appeal site and its setting. Furthermore, I am not aware of the planning status or circumstances that may have led to those cases.
21. Overall, I find that the development significantly detracts from the prevailing open fronted character of the area and is unduly conspicuous and discordant when viewed from within the street-scene. This is primarily because of the clutter of hard materials and the design and height of the structure. The property portrays a visually intrusive enclosure which contains its frontage in a contrasting style and character to other properties in the locality.
22. As a result, I find conflict with policy P15 of the Solihull Local Plan (2013) and the guidance relating to boundary treatments within the Solihull House Extension Guidelines Supplementary Planning Document (2010) insofar as it seeks to conserve and enhance local character, harmonising with the distinctiveness and streetscape quality within the natural and built environment. In this respect, I also find conflict with the guidance in the National Planning Policy Framework.

Other matters

23. The appellant suggests that over the natural course of time shrubbery will grow between the boundary wall and the railings, which would be in keeping with area. However, the development is a permanent structure whereas vegetation changes over time and in this case, there is no evidence of any means by which vegetation can be retained to mitigate the visual impact of the development.
24. The frontage treatment is perceived, by the appellant, as a security barrier providing a safe space and reducing crime. This may be the case, and whilst I acknowledge such benefits, I do not consider this to be the only method by which to achieve security. Furthermore, I do not consider the matter to justify the harm identified.
25. I sympathise with the appellant concerning the Council's approach whilst dealing with the planning matters. However, my assessment is based on an impartial appraisal of the planning merits with regard to relevant planning policies. Dissatisfaction with the Council's procedure should appropriately be made in the first instance through the authority's own complaints procedure.
26. For the reasons set out above, I conclude that the ground (a) appeal should fail.

The ground (f) appeal

27. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the injury to amenity, which has been caused by the breach of planning control. S173(3) of the 1990 Act requires that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to remedy the breach of planning control set out in section 3 of the notice.
28. The enforcement notice refers to the development being an 'overly prominent, visually intrusive discordant feature' and 'causing demonstrable harm to the visual amenity of the street scene'. The steps required by the notice, stipulate the complete removal of the boundary wall, pillars, railings and gates to remedy the breach of planning control. This requirement is in accordance with s173(4)(a) of the 1990 Act.
29. However, enforcement should be *remedial rather than punitive*¹ and the appellant, in her statement, proposes that the "structure be allowed to be reduced to the permitted height in accordance with the rules". While the issued requirements do not exceed the purpose behind the notice, a further option is to reduce the height of the boundary wall, pillars, railings and gates so that no part exceeds 1m above ground level, thereby meeting the requirements, limitations and conditions within Class A of Part 2, Schedule 2 of the GPDO.
30. This would be a reasonable and obvious alternative to complete removal, at less cost and disruption. Varying the notice in line with s173(4)(a) to require that either the development be demolished or that it be modified to comply with permitted development rights would cause no injustice to either party.
31. I shall vary the notice to that effect and the appeal on ground (f) succeeds.

S Hanson

INSPECTOR

¹ *Tapecrown Ltd v FSS & Anr [2006] EWCA Civ 1744*