



Appeal Decisions

Site visit made on 4 August 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Appeal A Ref: APP/A2280/C/19/3238108

Appeal B Ref: APP/A2280/C/19/3238109

Land known as 54 Vidgeon Avenue, Hoo, Rochester, Kent ME3 9DE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Ian Iveson, Appeal B is made by Mrs Debra Iveson, against an enforcement notice issued by Medway Council.
 - The enforcement notice was issued on 29 August 2019.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission the construction of a boundary wall exceeding one metre in height adjacent to a highway.
 - The requirements of the notice are:
 - a) Remove the wall which exceeds one metre; or
 - b) Reduce the wall to a maximum of one metre.
 - The period for compliance with the requirements is one month.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of a boundary wall exceeding one metre in height adjacent to a highway at land known as 54 Vidgeon Avenue, Hoo, Rochester, Kent ME3 9DE as shown on the plan attached to the notice and subject to the condition in the attached schedule.
2. I take no further action in respect of Appeal B.

Application for costs

3. An application for costs was made by Medway Council against Mr Ian Iveson and Mrs Debra Iveson. This application is the subject of a separate decision.

Preliminary Matter

4. A planning application¹ seeking permission for the wall as built was refused and the subsequent appeal² under Section 78 of the 1990 Act was dismissed.

¹ Ref MC/18/2697

The ground (a) appeal and the deemed planning application

5. Having regard to the reasons for issue the notice, the main issue is the effect of the wall on the character and appearance of the area.
6. The appeal site lies in a prominent location on a corner plot at the junction of Pankhurst Road with Vidgeon Avenue. It is a predominantly residential area, and properties in the immediate vicinity are bungalows. Due to the local topography the appeal site is in an elevated position, and the wall has been built on its side boundary, fronting onto Vidgeon Avenue, with a return that encloses the side garden.
7. The wall is finished with white painted render, and as a result is noticeable in the area. There are no similar walls in the vicinity, and it appears as an alien feature, with a stark appearance due to the expanse of rendered white finish which contrasts with the brick and tiles characteristic of the area. I agree with the previous Inspector's conclusion, and find that the wall is harmful to the character and appearance of the area.
8. However, the appellants are now proposing that the lower part of the wall could be clad in timber, with the upper section covered in artificial foliage. Indeed, at the time of my site visit the wall had been partially covered with artificial foliage. This, along with the timber cladding, would have the effect of breaking up and screening the large white rendered surface, so that it would appear less strident and better integrated with the boundary treatments and garden planting in the surrounding area. I am satisfied that this could be secured through a planning condition if I allow the appeal, and would be sufficient to overcome the harm.
9. Subject to the condition, I conclude that the wall is not harmful to the character and appearance of the area. Accordingly, it is not in conflict with Policy BNE1 of the Medway Local Plan 2003 which seeks, amongst other matters, to ensure that new development is appropriate in relation to the character and appearance of the built and natural environment. It is also not in conflict with the guidance in the National Planning Policy Framework.

Condition

10. A condition is necessary to secure the provision of the coverings to the wall. The purpose of the condition is to require the appellant to comply with a strict timetable for dealing with the provision of the coverings. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

² Ref APP/A2280/D/19/3224487

Conclusion

11. Appeal A succeeds on ground (a) and planning permission is granted on the deemed planning applications for the operations/use described in the notice. The enforcement notice will be quashed, and it follows that Appeals A and B on ground (f) do not fall to be considered.

N Thomas

INSPECTOR

Condition Schedule

- 1) The wall shall be removed and all materials arising from its removal shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 1 month of the date of this decision a scheme for the provision of cladding to the wall with wood and artificial foliage shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.