



Appeal Decision

Site visit made on 13 October 2020

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2020

Appeal Ref A: APP/X1545/C/19/3236335

Appeal Ref B: APP/X1545/C/19/3236336

**Land at Boreham Lodge Barn, 48 Southminster Road, Tillingham, Essex
CM0 7UF**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Rosemary Ball (Appeal A) and Mr Russell Ball (Appeal B) against an enforcement notice issued by Maldon District Council.
- The enforcement notice was issued on 16 August 2019.
- The breach of planning control as alleged in the notice is the unauthorised operational development of the erection of wall, pillars and gates.
- The requirements of the notice are:
 - (i) Remove from the land the unauthorised walls, pillars and gates (identified in Annex 2 attached to the notice); or
Reduce the walls, pillars and gates (identified in Annex 2 attached to the notice) to a maximum height of 1.0 metres from the existing ground level; And
 - (ii) Remove from the land all materials, waste and equipment resulting from the compliance with requirements (i) above.
- The period for compliance with the requirements is 28 days.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (e) and (g) of the Town and Country Planning Act 1990 as amended and Appeal B is proceeding on grounds (e) and (g).

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld with corrections and variations.

The Enforcement Notice

1. An enforcement notice must enable every person who receives a copy to know exactly what, in the Councils view, constitutes the breach of planning control. It is not clear in this case as the description of the development is stated as being 'The unauthorised operational development of the erection of wall, pillars and gates' but both parties agree the development only involves the erection of a small stretch of wall with two pillars on the eastern side of the vehicular access into the site. Most of the work concerns the alteration of an existing wall by adding a coping and pillars to the top with railings in between the pillars and adding a single gate that slides to one side to open.
2. I consider though that the appellants have not been misled by the incorrect framing of the allegation. This is because they submitted an application to regularise all the development after it was built, which was subsequently refused by the Council. The supporting statement accompanying the application, together with detailed plans, is included with the ground (a) appeal. As the Council also refer to all aspects of the development in their

Statement of Case, it is considered that there would be no injustice to either party if I were to correct the allegation. I shall therefore proceed on the basis that the allegation is 'Without planning permission, the alteration of an existing wall by adding coping, pillars and railings and the erection of a new wall with pillars and a railing and the fitting of a gate between the two sections of the boundary wall'.

The ground (e) appeals

3. Under a ground (e) appeal the onus of proof is on the appellants to show that the enforcement notice has not been served as required by section 172 of the Town and Country Planning Act 1990 (the Act). Section 172(2) states that a copy of the notice shall be served on (a) the owner and on the occupier of the land to which the notice relates; and (b) on any other person having an interest in the land which, in the opinion of the authority, is materially affected by the notice.
4. The appellants submit that a copy of the notice was served on their plumber who was working at their property, while they were out, on the 16 August 2019, the date the notice was issued. He drove off with the documents and forgot to pass them on until the 1 September 2019. The appeal was then lodged on the 2 September 2019.
5. The Council's Certificate of Service confirms that the Council's officer hand delivered copies of the notice addressed to the appellants via their plumber, who was working in the house at the time. The name of the plumber was recorded in the Certificate of Service. He agreed to hand the papers to the appellants and the Council officer saw that he took them into the house.
6. Section 172(3) sets out that the service of a notice shall take place not more than 28 days after its issue and not less than 28 days before the date specified in it as the date on which it is to take effect. In this case the notice was served on the day it was issued so the requirements of section 172(3) were met. The appellants were still able to lodge their appeals and have not demonstrated how they were substantially prejudiced by the Council's actions and the delayed receipt of the papers on the 1 September. I am therefore satisfied that the requirements of the Act were met and the appeals on ground (e) fail.

The ground (a) appeal and the deemed planning application

Main Issues

7. The main issues are the effect of the development on (i) the character and appearance of the area; (ii) the adjacent listed buildings, having regard to the statutory duty to preserve their setting; and (iii) highway safety.

Reasons

Character, appearance and setting

8. The appeal site comprises a detached dwelling set back from the road. It is situated amidst a small group of dwellings in a rural area. The dwellings vary in age, appearance and plot width with those either side of the appeal site (No 40 Southminster Road to the east and No 52 Southminster Road to the west) being listed grade II. Unusually for a group of dwellings outside a village, there is a pavement on one side of the road. Many of the houses are sited on the

back edge of this pavement but there are exceptions, such as the appeal site, No 40 and No 36 to the east of No 40. Front boundary treatments, where they exist, vary in appearance as well. There is, for example, mature hedging to the front of Nos 36 and 40 and metal railings in front of White Horse Farm and Ringwoods.

9. The former front boundary treatment at the appeal site comprised a low red brick wall around 1m high. The appellant states that this needed to be repaired and she wished to improve the security of her property and create an enclosed space to prevent her dog from escaping. She therefore rendered the wall and increased the height to around 1.8m high by adding a course of coping stones, pillars and railings as well as fitting a gate. Since the issue of the notice she has now planted a laurel hedge behind the wall.
10. The alterations to the wall were carried out with some thought. As most of the houses in the area are rendered and her own house was finished in white painted render with black window frames, the appellant considered that the treatment of the wall blended in. At the site visit I saw that the render on the dwelling has now been painted green.
11. It is considered that it is not the rendering of the existing wall that causes harm but the addition of the pillars, railings and gate and the extension of the wall eastwards. Other than the tall hedge outside Nos 36 and 40, front boundary treatments in this area are low in height. The development at the appeal site is therefore incongruous and this is emphasised by the white painted finish of the altered and extended boundary wall, which results in a stark appearance visible in long distance views when approaching the site from both directions.
12. Notwithstanding that the appellant could paint the wall to match the new green colour of the house, this would not overcome the inappropriate design of the development. The appeal site has the benefit of an especially wide plot and the development includes the addition of a significant number of pillars, namely 12, which together with the expanse of railings in between and the width of the single gate results in an overly elaborate design for a rural area. In particular, each of the pillars is topped with a tile creasing feature and red engineering bricks and the railings include decorative spears. Overall, I find that the alterations to the wall are visually intrusive and cause harm to the rural character and appearance of the area.
13. With regard to the listed buildings, No 40 is set well back from the road. There is a detached garage adjacent to the boundary with the appeal site and it is my view that the development does not fall within the setting of No 40 and therefore has no effect on it, given the siting of this dwelling is some distance from the wall.
14. No 52 is a one and half storey thatched cottage with an attractive gambrel roof. It is sited in close proximity to the boundary of the appeal site separated from it only by a narrow vehicular access. It is also situated on slightly lower land just behind the back edge of the pavement. The dwelling to the west of No 52 (No 56) is also one and half storeys in height and is set slightly forward of No 52. The gap between the two buildings is quite narrow. The historical setting of No 52 comprises the surroundings in which the heritage asset is

experienced¹ and, in this instance, includes not just the view from in front of the property but also the view from the east along the road and across the front garden of No 48. From this point there is a long uninterrupted view of the attractive roof feature and the two side elevation windows positioned one above the other. It is framed by the projection of No 56 and the set back of the dwelling at No 48 which together make a positive contribution to the significance of the listed building.

15. It is considered that the alteration and extension of the front boundary wall results in a negative contribution to the significance of No 52 as a listed building. This is mainly due to the increased height of the wall and the long row of pillars which obscure and detract from the view of the lower side window and the full detail of the thatched roof. As such, I find there is harm as the development does not preserve the setting of the listed building.
16. Although the harm to the listed building is less than the 'substantial harm' referred to in paragraph 195 of the National Planning Policy Framework (the Framework), it nevertheless weighs significantly against the development. Paragraph 196 of the Framework requires the harm in such instances to be weighed against any public benefits of the proposal. The appellant submits that repairing the wall and rendering it so that it matches its surroundings results in a significant improvement to the character and appearance of the area. However, for the reasons set out above, it is considered that this would be an insufficient public benefit to outweigh the harm I have found to the setting of a listed building. Accordingly, the development is at odds with the advice in paragraph 196 of the Framework.
17. The appellant submits that there are other properties further along Southminster Road and within the district that have boundary treatments over 1m high adjacent to the highway. I do not know the circumstances of those cases referred to or the policies that applied at the time of their consideration but it appears that they do not represent a direct parallel to the development, having regard to, for example, the proximity of the listed buildings. In any case, I have determined the appeal on its own merits. I have also had regard to the appellant's personal reasons for carrying out the development but these may change in the future whereas the development is permanent.
18. For all these reasons it is concluded that the development causes harm to the character and appearance of the area and the setting of a listed building. As such, it does not accord with Policies S1, S8, D1 and D3 of Maldon District Approved Local Development Plan 2014-2029, July 2017 (LDP). These require amongst other matters that development should respect and enhance character and local context.

Highway safety

19. The Council raise two concerns in respect of highway safety. However, the position of the new entrance gate appears not to be an issue. This is because although it is mentioned in the reasons for issuing the notice, the effect of the steps required to be taken to comply with the notice results in under enforcement in respect of the gate. It is therefore concluded that the Council's concerns are not made out on this point.

¹ National Planning Policy Framework Glossary

20. With regard to the location of the pillars on the boundaries of the access drives with Nos 40 and 52, the Council state that these compromise visibility splays. The road outside the appeal site runs in a straight line for a considerable distance in both directions and the maximum speed limit is 40mph. The appellant though submits that sometimes cars go past in excess of this limit. Given the few houses in the area, I consider that pedestrian traffic would be low but Southminster Road is classified as the B1021 and is the main road out from the Dengie peninsula, as such it is likely that at certain times of the day it would be busy.
21. It is considered that the development has affected the visibility for drivers exiting each driveway. This is particularly the case for those at No 52. Here the driveway is on slightly lower ground than the appeal site which accentuates the effect of the increased height of the wall on the available visibility. The appellant states that the front boundary hedge at No 40 grows out over the pavement impeding visibility but it is considered that this can be cut back whereas the height of the pillars is permanent and thus the reduction in visibility is harmful to highway safety.
22. For these reasons it is concluded that the development causes harm to highway safety. As such, it does not accord with Policies D1 and T2 of the LDP. These require amongst other matters the provision of safe vehicle parking.
23. Having regard to my findings on all three main issues, the appeal on ground (a) therefore fails.

The ground (g) appeals

24. This ground of appeal is that the 28 day period given to comply with the requirements of the notice is too short and that this should be extended to six months. The appellants argue that they have already contacted several builders and none can carry out the work for at least six months. The basis of this appeal is that the appellants require more time to obtain a start date from a builder. However, they have not submitted any evidence to substantiate their case.
25. The appellants also submit that the Council took some time between investigating the breach and issuing the notice. As such, it is only fair that the appellants should have more time to comply with the notice. I give limited weight to this argument because the appellants asked for an extension of time after the breach was brought to their attention and used the time to submit a planning application. Following the refusal of that application, the Council then issued the notice.
26. The purpose of the compliance period is to allow time to carry out the actual physical works involved in remedying the breach of planning control and, as such, I consider that ordinarily 28 days is a reasonable period to remove a wall. However, the notice sets out the requirements in the alternative and whilst 28 days would be reasonable if the appellants choose to remove the development, it is considered that more time is needed if the appellants choose to reduce the height of the development. The appellants state, for example, that the gate would have to go back to the workshop and either be re-worked or a new gate be made. In my view the alternative step is likely to take longer than 28 days and three months would be a more reasonable period. The appeals on ground (g) therefore succeed.

Other Matters

27. Ground (f) has not been pleaded but it is necessary to vary the requirements of the notice to accord with the corrected allegation. As the development involves the alteration of an existing wall, it is not necessary to require that the altered section of wall be removed, only that the coping, pillars and railings are removed. In respect of the section of wall on the eastern side of the access, it is necessary to specify that it be removed together with the pillars, railing and gate in order to remedy the breach of planning control.
28. With regard to the alternative requirement, as currently drafted the Council are under enforcing in respect of the gate. This is because the requirement to reduce the height of the development results, in effect, in the removal of the pillars and railings but the retention of a lower height gate. To delete the alternative requirement, would cause the appellants injustice as they would be denied the benefit of an unconditional planning permission under section 173(11) of the Act. Therefore, the alternative wording should simply be varied to refer to the wall and gate in the singular and to include a reference to the railings.

Conclusion

29. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Formal Decisions

30. It is directed that the enforcement notice be corrected by:

- the deletion of the words in the allegation and the substitution of the words 'Without planning permission, the alteration of an existing wall by adding coping, pillars and railings and the erection of a new wall with pillars and a railing and the fitting of a gate between the two sections of the boundary wall (As shown in the photographs attached to the notice)';

and varied by:

- the deletion of the words in the first requirement of the notice and the substitution of the words 'Remove the coping, pillars and railings from the altered section of the existing wall and remove the additional stretch of wall, with its pillars, railing and gate from the land. OR Reduce the wall, pillars, railings and gate (As shown in the photographs attached to the notice) to a maximum height of 1.0 metres from the existing ground level';

- the deletion of 28 days and the substitution of three months as the period for compliance.

Subject to these corrections and variations the appeals are 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.

D Fleming

INSPECTOR