



Appeal Decision

Site visit made on 26 January 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2021

Appeal Ref: APP/Z4718/C/20/3261653

Land at 53 Quarmby Road, Quarmby HD3 4EA

- 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 Nasan Hussain against an enforcement notice issued by Kirklees Council.
 - The enforcement notice was issued on 15 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission the erection of retaining walls and alterations to ground levels without the benefit of planning permission.
 - The requirements of the notice are:
 - a) Dismantle and permanently remove the retaining walls (erected along the south and east boundaries)
 - b) Restore the land to its condition before the unauthorised development took place.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of 60 days and the substitution of three months as the period for compliance with both requirement (a) and (b). Subject to this variation I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

2. Planning application 2019/62/93326/W, "change of use of land to extend domestic curtilage, erection of garage, greenhouse, retaining walls and alterations to ground levels", was refused on 17 January 2020. For clarity the enforcement notice and this appeal relate only to the operational development as set out in the description of the alleged breach.

The appeal on ground (a) and the deemed planning application

3. The main issue is the effect of the development on the character and appearance of the area.
4. The appeal site consists of an irregular shaped parcel of land located to the rear of 53 Quarmby Road, in a residential area. Due to the nature of the development and the topography of the surrounding area, there are very limited views of the walls from within the site, with the primary public views

being of the retaining wall on the broadly south west facing boundary of the land.

5. I observed at my site visit that retaining walls are a feature of the locality. Such walls in some cases are substantial in both height and length but are predominantly constructed of stone, blockwork and render are not characteristic finishes. The use of stone building materials and boundary treatments gives the immediate locality in which context the wall is viewed, a generally traditional character and appearance.
6. Whilst the development may be visible in wider distant views, at my visit I observed that the wall is most prominent in views from the garden at 83 Cliffe End Road. There are some views from Cliffe End Road however, these are more limited due to the sites elevated position, the differing levels of intervening land and the presence of boundary features and vegetation. Consequently, in such views the scale and length of the wall are not significantly appreciable.
7. Nevertheless, as a result of the materials used in its construction, the wall appears as a stark and visually discordant feature which is not in keeping with the robust stone walls that are important to the character and appearance of the area. Consequently, whilst reasonably localised in its extent, the effect is to unacceptably harm the character and appearance of the area.
8. Therefore, the development does not accord with Policy LP24 of the Kirklees Local Plan Strategy and Policies Adopted 27 February 2019 which requires that the form, scale, layout, and details of all development respects and enhances the character of the townscape heritage assets and landscape. It also conflicts with the design aims of the National Planning Policy Framework.
9. For the above reasons and with regard to all other matters raised, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The appeal on ground (f)

10. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the walls to be removed and the land restored to its condition before the breach took place, I consider the purpose is to remedy the breach of planning control.
11. The appellant referred to their intention to negotiate an acceptable design and submit a revised planning application.
12. However, in pleading ground (f), the onus is on the appellant to state the precise details of any lesser steps at the time of their appeal. If I were to allow the appeal on ground (f) then I would need to vary the requirements of the notice in such a way that unambiguously sets out what needs to be done, precise requirements are essential. Whilst the appellant referred to improvements to the appearance of the wall, including planting, they have not suggested any lesser steps.
13. For the reasons given, I consider that the development has a harmful effect on the character and appearance of the area. I have no details before me to show

how it could be altered to overcome those objections. Consequently, since I am not able to specify with the necessary precision by way of variations to the notice, alterations that would need to be made in order to overcome the identified harm, I conclude that the appeal on ground (f) must fail.

The appeal on ground (g)

14. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. However, the appellant did not suggest what they consider a reasonable period would be.
15. Where an appeal is made against an enforcement notice, regardless of the grounds, the appeal 'stops the clock' and the period for compliance does not start until the date of the appeal decision. If the appeal proceeds on ground (g) and other grounds, the appellant is entitled to assume success in the other grounds, and so it is necessary to start from the date of the appeal decision when considering what the 'reasonable' period for compliance would be.
16. The purpose of the time period within an enforcement notice is to allow for the physical works associated with the notice to be removed, 60 days would be a reasonable period in which to do this. However, given my findings in respect of the appeal on ground (a), it may be, although there is no guarantee, that an acceptable solution could be found that would overcome the objections at less disruption and cost than total removal.
17. Taking this and all other matters into account I conclude that the period for compliance, in respect of both requirements, should be extended to three months. This would be a proportionate response to the breach of planning control and a sufficient period to enable the appellant to submit an alternative application to the Council and if approved, implement it. To this extent, the appeal on ground (g) succeeds.

Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR