



Appeal Decision

Site visits made on 9 February and 31 March 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2021

Appeal Ref: APP/X1355/C/20/3262544

Land to the East of George Street, Haswell DH6 2DG

- 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 Martin Quinn against an enforcement notice issued by Durham County Council.
- The enforcement notice was issued on 30 October 2020.
- The breach of planning control as alleged in the notice is Without planning consent the construction of boundary walls of 2.4 metres in height.
- The requirements of the notice are a. Reduce the means of enclosure as identified in blue on the attached plan (DDC2), including pillars and coping stones in all areas to no higher than 1.8 metres; b. Reduce the means of enclosure as identified in green on the attached plan (DCC2), including pillars and coping stones in all areas to no higher than 2 metres; c. Permanently remove the resultant materials from the site to an appropriate registered location.
- The period for compliance with the requirements is 28 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.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld with corrections and a variation in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr Martin Quinn against Durham County Council. This application is the subject of a separate Decision.

Preliminary Matters

2. It would appear, from the representations, that the Council originally issued an enforcement notice relating to the alleged development on 25 September 2020. The appellant made a planning application for the same development subject to the enforcement notice, in relation to which the Council received the correct fee on 28 September 2020. The Council then refused to determine the aforementioned planning application, using its powers under section 70C of the Act. The Council subsequently withdrew the original enforcement notice on 30 October 2020, on the basis that it had not provided the correct fee advice. It served a replacement notice on the same day.
3. The appellant claims that the present notice should be regarded as a nullity on the basis of the implications of a series of procedural errors by the Council. Firstly he says that the correct fee was not specified within the explanatory note accompanying the original enforcement notice; then in withdrawing the original notice the basis for the Council using its powers under section 70C of

- the Act fell away, and accordingly the planning application should then have been regarded as validly made. Hence the subsequent notice, in the appellant's view, contained incorrect fee advice, because the existence of the planning application to the Council would mean that the deemed planning application, in relation to this notice, would be exempt from a fee.
4. The original notice was withdrawn by the Council, using its powers under Section 173A of the Act. There is no dispute that the Council was entitled to withdraw the original notice. Whilst the appellant has questioned the use by the Council of its powers under section 70C of the Act to decline to determine a planning application, and whether that planning application should now be regarded as validly made, this is not a matter before me to determine in this appeal.
 5. It seems to me that in withdrawing the original notice, the Council acted with fairness, ensuring that the appellant's interests have not been prejudiced. Whilst the relevant fee is disputed there is nothing to persuade me that the fee advice provided by the Council is incorrect. In any event the fee is a procedural matter over which I have no jurisdiction. Furthermore, because of the ground (a) appeal, the appellant has not been denied the opportunity, by s70C being invoked, of having the deemed planning application considered. The appellant has not therefore demonstrated that the notice is deficient so as to constitute a nullity.
 6. Reference is made to the Council referring incorrectly, on the covering letter to the notice, to the alleged breach as the creation of a hardstanding area. This appears to have been an unfortunate oversight. Notwithstanding this the correct allegation is set out on the notice itself and does not alter the above conclusion regarding nullity.
 7. On a separate matter, from my visit it was apparent that the sections of wall alleged to have been constructed behind the detached garage at the rear of the dwelling known as 'Martin View', and crossing the access road into the site from Chapel Lane were no longer in place.
 8. Also paragraphs 2 and 5a of the notice refer incorrectly to the attached plans as 'DDC1' and 'DDC2' respectively. I am satisfied that these errors can be corrected without prejudice to either party.

The appeal on ground (a)

Main Issues

9. The appeal on ground (a) is that planning permission should be granted. The main issues are the effect of the means of enclosure, identified in blue on the notice, on the character and appearance of the area and ii) the effect of the means of enclosure, identified in green on the notice, on the living conditions of the occupiers of properties adjoining the site to the north, south and east, having particular regard to outlook and privacy.

Reasons

Character and Appearance

10. The appeal site is broadly rectangular in shape and finished with a hardstanding surface. There is a fall in ground level to the north, in keeping

with the slope of George Street, which runs adjacent to the western boundary of the site. The gardens of a modern housing estate, Lapwing Court, adjoin the site to the east, a number of which appear to be at lower ground level.

11. The appeal site lies between the rear of traditional terraced properties, on the opposite side of George Street, characterised by a variety of tall walls, outbuildings and old fences and the housing estate to the east, characterised by the more homogenous design of modern dwellings. The Council previously granted planning permission, in October 2018, for the erection of three bungalows on the southern portion of the site¹.
12. The boundary wall that forms the means of enclosure, subject to this notice, is essentially a uniform design, constructed in red brick, with taller, regularly spaced piers and coping stones. The notice requires that the long section of wall, adjacent to George Street, and the shorter return section, along North View, be reduced to a height of 1.8 metres in total.
13. It was clear from my visit that the wall in these locations significantly exceeds this height. Despite the piers and coping stones, serving to break up its monotonous facade, the height of the structure, and its position immediately adjacent to the highway, results in an austere and domineering feature. It presents a hard sense of enclosure, which despite the poor condition of some of the existing structures on the opposite side of the road, still contributes to the making of an unattractive and somewhat regimented corridor along George Street. The height of the return section of wall along North View, results in a similarly hard and overbearing impact on the approach to the two adjacent semi-detached properties there.
14. Although there are tall structures on the opposite side of George Street, as referred to above, which assimilate the height of the wall to a degree, I am firmly of the view that they do not serve to justify its presence. Nor do I agree that the height of the wall is acceptable when taking into account the height and design of the structure that was previously approved by the Council in this location. It seems to me that the wall as-built, adjacent to George Street and North View, significantly exceeds this height.
15. Furthermore the approved design would have incorporated close boarded timber fencing between the piers, thus helping to soften the appearance of the structure, whilst to my mind contrasting but not jarring with the more varied but ageing types of enclosure on the opposite side of the road. I consider that the approved design, where the top of the piers and coping stones would have meant the overall height of the structure being in excess of the 1.8 metres required by the enforcement notice, is not such a significant factor as to amount to a fallback position weighing in favour of the retention of the wall as-built.
16. To my mind the required reduction in height would still leave the wall in keeping with its surroundings, whilst softening the appearance of the street scene, thus beneficial to the enjoyment of the public space along it. Furthermore there is no evidence before me to suggest that the security of the site or the privacy of residents who may live there, if the site is developed in the future, would be compromised as a result.

¹ Ref DM/18/00519/FPA

17. I therefore conclude that the means of enclosure, identified in blue on the notice, results in harm to the character and appearance of the area. Accordingly there is conflict with Policy 29 of the County Durham Plan 2020 (CDP) and with the National Planning Policy Framework (the Framework) insofar as they seek to secure a high standard of design.

Living Conditions

18. The houses on Lapwing Court (nos 7-15), adjoining the site to the east, Nos 1 and 2 North View, adjoining the site to the north, and properties on George Street and Chapel Lane, adjoining the southern boundary to the west of the site access, in the main have rear gardens of quite limited length and area. In addition the external parts of certain properties share side boundaries with the appeal site.
19. It would appear that the properties at 11-15 Lapwing Court are at lower ground level, compared with the adjacent southern portion of the appeal site. It is uncertain whether the ground level of the appeal site has been raised somewhat, following the application of a hardstanding area. In any event the appellant does not seek to challenge that the breach of planning control, as set out in the notice, has occurred as a matter of fact.
20. I have taken into consideration that the wall constructed along the eastern boundary of the site appears to be somewhat set back from the rear gardens of adjacent properties. I am in no doubt that the height of the boundary wall, as alleged to have been constructed and in the position shown on the notice, results in an overbearing effect on outlook from the rear of the aforementioned properties adjoining the site to the east, north and south. This is likely to make occupiers feel excessively enclosed and boxed in, therefore resulting in a more oppressive living environment. It also seems to me that the height of the wall as alleged would appear overbearing as a side enclosure, viewed from external parts of adjacent properties.
21. I have a statutory duty to consider the impact of development including on future neighbours, even when no specific objection from third parties has been forthcoming. Therefore the fact that the appellant may currently own one or more of the adjoining properties does not alter my findings.
22. The appellant has cited that he would have the freedom to build a boundary wall up to a certain height in principle (two metres), as permitted development. However, to my mind the height of the wall as alleged exceeds the permitted height, which in itself would amount to a tall enclosure, to a significant degree, and in relation to which the enforcement notice effectively seeks to achieve parity.
23. I have had regard to the approved layout plan for the three bungalows permitted on the southern portion of the site, by way of the aforementioned planning permission, including their finished floor levels, siting and orientation including principal directions of outlook, and their relationship with the adjacent dwellings on Lapwing Court and Grousemoor. Despite the proximity of the two developments I am not persuaded, from the information before me, including the reference in the relevant officer report to the absence of direct window to window relationships, that the reduction in height of the wall between them would lead to the privacy of residents being compromised or any increased sense of mutual overlooking. Furthermore I do not consider that the proximity

of adjacent dwellings to the site boundary serves to compromise the principle of development on the site, so as to justify the retention of the wall from this perspective.

24. I conclude that the means of enclosure, identified in green on the notice, results in harm to the living conditions of the occupiers of properties adjoining the site to the north, south and east, having particular regard to outlook, whilst not resulting in a material improvement to the privacy of those residents. There is therefore conflict with Policies 29 and 31 of the CDP and with the Framework insofar as they seek to protect the living conditions of residents.

The appeal on ground (f)

25. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purpose of the enforcement notice in this case is to reduce the height of the wall. Because it does not require the structure to be removed altogether, its purpose is therefore to remedy injury to amenity, as set out in s173(4)(b) of the Act.
26. The appellant suggests that, where it forms a boundary with neighbouring properties, the height of the wall above what could be built anyway under permitted development rights is 'de minimis' and would not therefore result in a material impact. It is therefore argued that the requirement to reduce the height of this element of the wall should be deleted from the notice. However as set out above I do not agree that the impact is insignificant. The ground (f) appeal therefore fails.

The appeal on ground (g)

27. The ground of appeal is that the time given to comply with the requirements is too short. I am not persuaded that it will be necessary to enter third party properties in order to carry out the works safely and conveniently. Nor would it be reasonable to allow for the delay of remedial work to enable the merits of the wall to be considered in the context of an as yet unknown future development scheme for the site.
28. Notwithstanding this, the 28-day period allowed to reduce the height of the structure and remove materials may be tight given the extent of the development. On the other hand the six-month period suggested by the appellant seems to me to be excessive, and I consider that a three-month period would be an acceptable and reasonable compromise.
29. I am satisfied that the notice may be varied accordingly without resulting in any injustice to the parties.

Conclusion

30. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and 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.

Formal Decision

31. It is directed that the enforcement notice be corrected by the deletion of the term "(DDC1)" and its substitution with the term "(DCC1)" in paragraph 2 and

by the deletion of the term "(DDC2)" and its substitution with the term "(DCC2)" in paragraph 5a.

32. It is directed that the notice be varied by deleting the words "28 days" in paragraph 6 and substituting the words "Three months" instead.
33. Subject to these corrections and variation, the appeal is dismissed, 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.

Roy Merrett

INSPECTOR