



Appeal Decision

Site visit made on 13 May 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 13th July 2021

Appeal Ref: APP/B3030/C/20/3264934

Land at Manor Cottage, Beck Street, Thurgarton, Nottingham NG14 7HB

- 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 Ian Roberts against an enforcement notice issued by Newark & Sherwood District Council.
 - The enforcement notice was issued on 30 November 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, 'development' consisting of the erection of a means of enclosure (brick wall with fence on top), as shown on photographs 1 & 2, along the south & east boundaries of the site.
 - The requirements of the notice are
Reduce to a height no more than 1 metre above ground level, the gates, wall, fence and any other means of enclosure (other than 'soft landscaping that would not constitute development) along the south and east boundaries, as shown in photographs 1 & 2.
 - The period for compliance with the requirements is 56 days.
 - The appeal is proceeding on the ground set out in section 174(2)(a)(c)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act as amended
-

Decision

1. It is directed that the enforcement notice is varied by deleting "56 days" and substituting "4 months" as the period for compliance. Subject to this 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.

Procedural Matters

2. The appellant in his initial documentation referred to matters relevant to ground (c) namely that part of the development did not need express planning permission. When asked for clarification of his grounds of appeal, the appellant expanded upon this matter and also referred to grounds (f) and (g). As the appellant is unrepresented and the Council was given the opportunity to comment upon the additional grounds of appeal, I do not consider that there is injustice to any party in addressing those grounds of appeal in this decision letter. The appeal is therefore proceeding on grounds (a) (c) (f) and (g).

The appeal under ground (c)

3. In order to succeed on this ground of appeal, the appellant would have to show that the matters alleged in the notice do not constitute a breach of planning

- control. With ground (c) the burden of proof is on the appellant to show that the development does have planning permission, namely either express permission or by operation of permitted development rights under the General Permitted Development Order 2015 as amended ("the GPDO").
4. The appeal site occupies a large corner plot on the junction of Beck Street and Priory Park. The development is a single boundary enclosure made up of a brick wall with pillars with fencing insets between the pillars. The notice relates to the elements of the boundary enclosure in front of the appeal dwelling on Beck Street and to the side on Priory Park.
 5. It is agreed that there is no express planning permission for the development. Part 2 of Schedule 2 and Article 3 of the GPDO permits the erection, construction, maintenance or alteration of a gate, fence, wall, or other means of enclosure. Paragraph A.1 provides that development is not permitted if the height of any gate, fence wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would exceed 1metre above ground level. There is no dispute that the boundary enclosure exceeds 1 metre in height and the part of the enclosure on Priory Park is adjacent to a highway and does not therefore benefit from permitted development rights. However, the appellant considers that the part of the enclosure which fronts onto Beck Street is not adjacent to the highway and on that basis would be permitted development.
 6. Nevertheless, when works are undertaken contemporaneously, the development as a whole must be looked at. It is not possible to split the works into different components on the basis that one part is permitted development and another is not. The authority for this proposition is the case of *Garland v City of Westminster* (1968) 20 P & CR 93 which the Council has referred to. In response, the appellant has provided an extract from the *Encyclopaedia of Planning Law* (the JPL) which refers to *Garland*. The extract seeks to distinguish between work that falls into two separate operations and those that are a single operation. However, in this instance, the development consists of one single operation constructed as a single enclosure along the whole length of the boundary rather than two separate operations. The *Garland* principle does therefore apply as the enclosure is a single operation. The remaining part of the extract in the JPL deals with the issue of the Council's discretion with regard to the requirement of the notice which relates to ground (f) rather than ground (c).
 7. To conclude on ground (c), the development consists of one single operation and part of the development is adjacent to the highway namely Priory Park and the single enclosure does not therefore benefit from permitted development rights. In the absence of permitted development rights or express planning permission, a breach of planning control has occurred. The appeal under ground (c) therefore fails.

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

Main Issue

8. The main issue is whether the development would preserve or enhance the character or appearance of the Thurgarton Conservation Area (the Conservation Area).

9. Conservation Areas are designated heritage assets as defined by the National Planning Policy Framework (the Framework) and great weight is to be given to their preservation and conservation. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 also requires that special attention be given to the desirability of preserving or enhancing the character or appearance of a conservation area.
10. The appeal dwelling, Manor Cottage, is a 19th century detached property on the corner of Beck Street and Priory Park within the Conservation Area. The Conservation Area Appraisal states "the view to the east along Beck Street is picturesque and idyllic where the beck runs along the side of the road with the attractive traditional cottages behind." The appeal site due to its location with the stream running parallel with the part of the boundary enclosure on Beck Street forms part of that appraisal and clearly makes a positive contribution to the character and appearance of the Conservation Area.
11. Prior to the development being erected, the boundary treatment was made up of soft landscaping in the form of a hedge with plant vegetation inside the hedge. The appellant subsequently removed the hedge as a section was overgrown and other sections had died and the appellant was concerned about flooding. The replacement enclosure the subject of the notice is made up of a red brick wall, pillars and wooden fencing insets which is in contrast to the more traditional boundary treatments on this side of the street which are a combination of modest brick or stone walls often with some soft landscaping. The dwelling next to the appeal site on Beck Street does have a wall made up of the same bricks as the development but it is not comparable to the development as it is lower in height, significantly shorter in length and has no insets of fencing or pillars.
12. The appellant's primary reason for the height of the wall is said to be flood risk. Flooding occurred in 2013 and 2020 with the house and garden being damaged in 2013 and the garden, patio and summer house being flooded in 2020. However, I share the Council's view that a lower boundary treatment is likely to provide some flood protection given that the appellant has added on 0.5 metres above the maximum height of a 2012 flood.
13. The appellant refers to the need for privacy and security particularly as the garden and house would be visible from Beck Street and Priory Park. However, there is no evidence before me to show that privacy and security could not be achieved by other means such as soft landscaping. The appellant has also referred to the work carried out to make the previously inaccessible path, due to the overgrown hedge, between the edge of the beck and the appeal site boundary to Beck Street, accessible. Whilst the appellant has listed the benefits of recreating the path such as exposing original paving slabs, a lower boundary treatment would also have enabled the path to be similarly restored. The appellant has referred to planting in front of the development but considers that it would not be particularly suitable. The appellant has separately referred to the possibility of a separate planning application for planting and hedging. As indicated by the Council, the use of plants and trees within the appeal site to serve as screening is within the control of the appellant and would not require a planning application. Whilst the appellant has said he would consider adding attractive railings and /or staining wooden panels dark green, I have no details of the railings in terms of size or style. Railings do not appear to be prevalent in the surrounding area and would not necessarily soften the impact of the

- development. Staining of the wooden insets would also not, in my view, have any significant impact upon the overall appearance of the enclosure.
14. Photographs of other boundary treatments in the vicinity been provided by the appellant. The photographs include a variety of different boundary treatments and includes walls with trellising or soft landscaping on top of walls. The photograph of the boundary treatment on Priory Park shows pillars and wooden insets but is modest in length compared to the development and is in a less prominent location in a corner of Priory Park which is a cul-de sac. The circumstances that relate to existing individual boundary treatments will also differ such as boundary treatments that cannot be enforced against due to being in situ for more than 4 years. The photograph of the older wall appears to be of the opposite side of Beck Street and is a part of a very long boundary to the building called the Old Rectory. In comparison, the boundary treatments for dwellings on the same side of Beck Street as the development are largely modest in scale and nature. I do not consider that the other boundary treatments referred to are comparable to the development either in terms of location or materials.
 15. Having regard to the prominent location of the appeal site, the solid scale and appearance of the development is an incongruous feature which is out of context with the street scene where boundary treatments are of a more traditional design and generally have soft landscaping.
 16. I do therefore find that the development does not preserve or enhance the character or appearance of the Conservation Area as required by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The harm caused to the significance of the Conservation Area is less than substantial. In accordance with paragraph 196 of the Framework, the harm that I have identified should be weighed against any public benefits of the development. The appellant has referred to the need to prevent crime and securing personal safety and flood prevention as being private benefits. However, there is no evidence before me to show that alternative boundary treatments would not achieve the same aims. Reference is made to the modest benefits of providing employment to local businesses and supply of materials. Nevertheless, I do not consider that any of these matters are public benefits of sufficient weight to outweigh the harm to the Conservation Area that I have found.
 17. For the reasons above, the development would harm the character and appearance of the area and would fail to preserve or enhance the character or appearance of the Conservation Area. The development is therefore contrary to DM9 of the Allocations & Development Management DPD (July 2013)(the DPD) which together with Core Policy 14 of the Newark and Sherwood Amended Core Strategy DPD (March 2019) (the Amended Core Strategy) states that development concerning heritage assets including Conservation Areas will be expected to secure their distinctive character. Core Policy 9 of the Amended Core Strategy, amongst other things, states that development should complement the existing built and landscape environment. The development also conflicts with Policies DM5 and DM6 of the DPD which collectively refer to respecting the character of the surrounding area and its local distinctiveness and mitigating any detrimental impact. The development is also contrary to the Thurgarton Neighbourhood Plan 2016-2026 which states that development should be carried out without detracting from the character and appearance of the Conservation Area.

The appeal under ground (f)

18. The appellant did not originally pursue this ground but due to a misunderstanding thought that the Council was of the view that the requirements of the notice were excessive. The appellant initially referred to the steps needing to be reasonable but subsequently in further comments in an email of the 19 May 2021 referred to discretion for the decision maker to not require total demolition. The requirement is, however, to reduce the enclosure not to demolish.
19. An appeal on ground (f) asserts that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
20. The notice should specify the steps which the Council require to be taken, in order to achieve, wholly or partly the purposes set out in Section 173(4)(a) and (b) of the Act. Those purposes are (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. The notice requires a reduction in the height of the enclosure to 1m above ground level.
21. As the notice is not requiring the demolition of the enclosure, the purpose of the notice is to remedy injury to amenity. The development is one single enclosure and has been treated as such by the Council in exercising its discretion in considering a reduction to 1 metre for that single enclosure to be appropriate. No alternative steps have been suggested by the appellant which would overcome the injury to amenity and a reduction in height to 1 metre for the enclosure is not excessive to remedy the injury to amenity. The appeal under ground (f) therefore fails.

The appeal under ground (g)

22. This ground relates to the period for compliance with the notice. The current period is 56 days. Whilst the appellant has not indicated what period he considers to be appropriate, he has referred to the need to obtain quotes and securing contractors and Covid -19 resulting in a backlog of work. Whilst Covid -19 restrictions are being eased, I do accept that, in the circumstances, it may take longer than usual to carry out the requirements of the notice. I will therefore extend the period for compliance to 4 months as a proportionate balance between the appellant and ensuring compliance. The appeal under ground (g) succeeds to that extent.

Other Matters

23. I note that the Thurgarton Parish Council supports the development but nevertheless that support does not alter the harm that I have identified. Whilst the appellant is critical of the way that the Council has dealt with the matter up to the service of the enforcement notice, those matters are outside the remit of this appeal.

Conclusion

24. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation to the period for compliance period to 4 months and refuse to grant planning permission on the application deemed to have been made under S177(5) of the 1990 Act as amended.

E Griffin

INSPECTOR