



Appeal Decision

Site visit made on 22 September 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 28 September 2021

Appeal Ref: APP/Z4718/C/21/3274314

35 Tintern Avenue, Milnsbridge, Huddersfield HD3 4PX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Matthew Hunt against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 31 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, an engineering operation consisting of the erection of a retaining boundary wall and raising of ground levels. The erection of metal railings and the erection of an outbuilding to the front of the site.
- The requirements of the notice are:
 - a) Dismantle and permanently remove the timber outbuilding including any resultant debris and materials;
 - b) Remove the railings on the front boundary and the retaining wall, return the ground levels to the level prior to the commencement of development carried out (as shown in Appendix 1).
- 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 1990 Act as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice is upheld in the terms set out below in the Formal Decision.

The ground (a) appeal and the deemed planning application

Main Issue

1. The ground (a) appeal is that planning permission should be granted for the matters alleged in the notice. The appellant has stated that they are not appealing against the aspects of the notice relating to the outbuilding. Nonetheless, the terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for a retaining boundary wall and the raising of ground levels, metal railings and an outbuilding to the front of the site.
2. The main issue is the effect of the development on the character and appearance of the area.

Reasons

3. The appeal property is a semi-detached house located within a residential area. Nos 33 and 35 sit closer to the road than other properties on the western side of the road, which tend to be set back behind grass verges. This layout adds interest to the street scene and enables some tree planting, which enhances

the appearance of the area. The majority of the houses along Tintern Avenue have gently sloping front gardens with low key boundaries, which are predominantly constructed from timber.

4. The appellant has not sought to appeal against the outbuilding, which had been removed at the time of my site visit. I consider that the outbuilding would be an unacceptable form of the development in this location due to its size, scale and siting and its resulting prominence in the street scene. It would adversely affect the character and appearance of the area, contrary to Policy LP24 of the Kirklees Local Plan (2019), which seeks to secure well-designed development that enhances the character of the area, and the National Planning Policy Framework (the Framework) insofar as it seeks to promote good design. I shall uphold the enforcement notice in respect of the outbuilding.
5. The remainder of the unauthorised works comprise a raised and levelled front garden area, with a retaining wall incorporating steps, which is enclosed by black metal railings. The wall measures approximately 1.2m in height and the railings are approximately 1.15m high.
6. Although the stone retaining wall and railings are not a common feature of Tintern Avenue, I do not consider that this in itself makes the development unacceptable. The wall and railings are well-built and the materials are of good quality. The enclosed front garden is not an unacceptable feature in a residential area characterised by family housing. When viewed from the north, the wall/railings form the backdrop to the grass verge and do not appear as an unattractive feature in the street scene. From the south, the railings are the most visible part of the development, given their raised siting, but they are not overly dominant as the houses and landscaping remain visible. The greatest impact is from the front of the property. However, the wall reflects the height of the neighbouring fence/hedge, and those opposite and, even when seen with the railings, it is not overly obtrusive.
7. The Council suggests that the development has reduced natural landscaping by increasing the surface area of impermeable materials. I appreciate that the area of hardstanding to the right of the front door has reduced the amount of turf in the front garden. However, a substantial proportion remains laid to grass and the reduction is unlikely to have a significant impact on the natural environment, or biodiversity and green infrastructure.
8. I find that, on balance, the wall and railings, in combination with the raised levels, are not inappropriate in this locality. The use of good quality materials and considered proportions enable the development to blend into its surroundings, while also contributing to the street scene in respect of the relationship of the wall to the adjoining grass verge. This aspect of the unauthorised development accords with LP24 of the Local Plan which, among other things, seeks to ensure development enhances the character and appearance of the area, and the Framework insofar as it seeks to promote good design.
9. For the reasons given above, I shall grant planning permission for the retaining boundary wall, raised ground levels and the erection of metal railings. The ground (f) and (g) appeals fall to be considered in respect of the outbuilding only, since the ground (a) appeal fails in relation to this element of the development.

Ground (f)

10. The ground (f) appeal is that the requirements of the notice are excessive to remedy the breach of planning control. The outbuilding constituting the breach was erected without planning permission. This can only be remedied by the removal of the unauthorised structure and any associated materials and debris, as specified in requirement (a).
11. I conclude, therefore, that the requirement is not excessive to achieve the statutory purpose behind the notice and the appeal on ground (f) fails.

Ground (g)

12. The ground (g) appeal is that the period for compliance with the notice falls short of what should reasonably be allowed. As the outbuilding has been removed, I am satisfied that the timescales specified are reasonable and the appeal on ground (g) fails.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Formal Decision

14. The appeal is allowed insofar as it relates to the erection of a retaining boundary wall, raising ground levels and the erection of metal railings 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 erection of a retaining boundary wall and raising of ground levels, and the erection of metal railings" at 35 Tintern Avenue, Milnsbridge, Huddersfield HD3 4PX.
15. The appeal is dismissed and the enforcement notice is upheld as insofar as it relates to the erection of an outbuilding, and planning permission is refused in respect of "the erection of an outbuilding to the front of the site" at 35 Tintern Avenue, Milnsbridge, Huddersfield HD3 4PX, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Debbie Moore

Inspector