



Appeal Decision

Site Visit made on 21 September 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 8 October 2021

Appeal Ref: APP/Q0505/C/21/3270383

107 Argyle Street, Cambridge, CB1 3LS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Stephen Turvill against an enforcement notice issued by Cambridge City Council.
 - The notice, numbered EN/0194/17, was issued on 12 February 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a boundary fence structure in excess of parameters of permitted development rights within The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2 Part 2 Class A (outlined in blue on attached plan for identification purposes only), along with the erection of a canopy made of recycled plastic to the side of the premises not in accordance with permitted development conditions laid out within The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2 Part 1 Class A (outlined in green on attached plan for identification purposes only) at the Land.
 - The requirements of the notice are to:
 - (i) Permanently remove the rear boundary fence structure (outlined in blue on attached plan for identification purposes only) in its entirety;
 - OR
 - Permanently reduce the height of the rear boundary fence structure (outlined in blue on attached plan for identification purposes only) so the height does not exceed 2 metres above original ground level (original ground level as per the level marked in attached photograph at a location pinpointed on attached plan for identification purposes only) as per parameters of permitted development rights within The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2 Part 2 Class A.
 - (ii) Permanently remove the canopy structure made of recycled plastic (outlined in green on attached plan for identification purposes only) from the Land; and
 - (iii) Permanently remove all resulting materials from the Land.
 - The period for compliance with the requirements is three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by the omission of the words 'made of recycled plastic' from section 3 (ALLEGED BREACH OF PLANNING CONTROL) and from section 5(ii) (WHAT YOU ARE REQUIRED TO DO).
2. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed, 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 development already carried out, namely the erection of a boundary fence structure in excess of parameters of permitted development rights within The

Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2 Part 2 Class A (outlined in blue on the attached plan for identification purposes only), along with the erection of a canopy to the side of the premises not in accordance with permitted development conditions laid out within The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2 Part 1 Class A (outlined in green on the attached plan for identification purposes only) at 107 Argyle Street, Cambridge, CB1 3LS as shown on the plan attached to the notice.

Preliminary Matters

3. On 20 July 2021 the Government published its revised National Planning Policy Framework (the revised Framework). The revised Framework replaces the previous version published in February 2019. Policies within the revised Framework are material considerations which should be taken into account for decision-making from the day of its publication. Consequently, I have given the main parties the opportunity to make comments on the relevance of the revised Framework to the matters which have been raised by the appeal.
4. I have not received any comments from the Council in respect to the revised Framework, but the appellants make reference to paragraphs relating to design in the revised Framework. Neither party would be prejudiced if I take the revised Framework into account in making my decision.
5. The appellant says that the works for which he sought planning permission in April 2018 were carried out before a revised National Planning Policy Framework was published in 2019 and the adoption of the Cambridge Local Plan in October 2018. On this basis he queries whether new 'legislation' can be applied retrospectively to the works. With regard to the revised Framework, he says it does not apply to the works which he has carried out.
6. Section 177(2) of the Town and Country Planning Act 1990 requires me to have regard to the provisions of the development plan, so far as material to the subject matter of the notice, and to any other material considerations, which includes the National Planning Policy Framework. In this case the development plan is the Cambridge Local Plan 2018 (the Local Plan), and the relevant version of the National Planning Policy Framework is that published in July this year (the revised Framework). The appellant has had the opportunity to make comments in relation to the Local Plan and the revised Framework.
7. The erection of the fence and the construction of the canopy pre-date the adoption of the Local Plan and the publication of the revised Framework. Nevertheless, the development requires planning permission and planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Therefore, to respond to the query raised by the appellant, it is the policy position at the time of my decision as opposed to that which was prevailing when the development was carried out which is the correct basis for my determination of the appeal.
8. The Council refers to additional trellis structures having been added to the fence and plants attached to them since the service of the enforcement notice. However, it would not be appropriate for me to amend the notice to refer to these works because that would expand the alleged breach of planning control

and cause injustice to the appellant. In any event the Council has not invited me to do so.

The Notice

9. An enforcement notice which was the subject of an earlier appeal (Appeal Reference APP/Q0505/C/19/3236990) was quashed on the basis that it did not specify with sufficient clarity the breach of planning control (BPC) and the steps required for compliance and could not be corrected without causing injustice. The notice which is the subject of the current appeal clearly sets out the BPC with reference to the relevant schedule/part/class of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) and addresses the previous Inspector's reasons for quashing the earlier notice.
10. There is a dispute between the parties regarding the material which has been used to construct the canopy which is the subject of the notice. The Council has in part followed the lead of the previous Inspector and described the material as recycled plastic. However, the appellant says that the material is polycarbonate.
11. The notice makes it clear that the alleged BPC is the erection of the canopy and it is clearly marked in green on the enforcement notice plan. In this particular case it is not necessary to include a description of the material from which the canopy is constructed in the notice to clarify what constitutes the alleged BPC. I can correct the notice to remove the reference to 'recycled plastic' without causing injustice to either of the main parties. Therefore, I shall make this change and the associated changes to the requirements of the notice and determine the appeal on that basis.

Ground (c)

12. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal and the onus of proof lies with the appellant. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.
13. In order to achieve success on ground (c) the appellant must show that either there has been no development, or that planning permission is not required for whatever reason, or that what is alleged complies with the terms and conditions of a planning permission.

The boundary fence structure

14. The appellant argues that the boundary fence referred to in the notice does not require planning permission because it is permitted development being an improvement or alteration of what was existing on the site. He considers that it would be permitted development by virtue of Schedule 1 Part 2 Class A(c) of the GDPO (Class A(c)). In order to demonstrate these circumstances, the appellant has submitted before and after photographs of part of the rear boundary fence.
15. The appellant's photographs show that before the fence was erected there was a fence along the boundary of the property which divided 107 Argyle Street (No. 107) from its attached neighbour number 105. From the photographs the heights of the previously existing fence and the new fence along this boundary

can be compared relative to the site context, particularly the eaves and ridge height of No. 30 Romsey Terrace. It is clear from this comparison that the new fence is higher than the previous fence.

16. The photograph of the previously existing treatment along the boundary with No. 30 Romsey Terrace shows a wall with a trellis above forming a structure which is almost entirely shrouded with vegetation. The photograph of the new fence shows that there is generally walling along this boundary with fencing above. Although parts of the new structure are not so tall as the maximum height of the vegetation, other parts are higher, again taking the eaves and ridge height of No. 30 Romsey Terrace as reference points. Also, the photographs do not show the full extent of the boundary treatment which existed before the new fence was erected.
17. There are no comparative photographs of the boundary fence which now forms the boundary with Nos. 1, 2, 3 and 4 Romsey Mews.
18. Whilst noting that the appellant argues that the new fence replaces a higher wooden structure, the Council has not provided evidence to contradict the appellant's version of events. However, in order to achieve success under ground (c) the appellant has to provide evidence, which is precise and unambiguous. In this case he has only provided partial comparative evidence of the rear boundary treatments which is imprecise.
19. Furthermore, I have found that the evidence which has been submitted shows that parts of the new fence exceed the height of previously existing boundary treatment and therefore are not permitted development by virtue of Class A(c) as suggested by the appellant.

The canopy

20. The appellant argues that there are many canopies in the city which have not required planning permission. Although this may be the case, he has not demonstrated why the particular canopy which he has constructed does not need planning permission.
21. The appellant does however refer to conditions set out in Schedule 2 Part 1 Class A of the GDPO which is the basis for the alleged BPC. He says that in his view the canopy structure is permitted development because it meets the condition of being constructed of materials of a similar appearance to those used in the construction of the exterior of the existing house. He also points out that conservatories are excluded from this condition.
22. With regard to the similarity of materials the cantilevered supports to the canopy are a close match for the colour and finish of the window frames in the building. However, the use of polycarbonate sheet introduces a new material which does not form part of the construction of No. 107. Furthermore, although the appellant describes the canopy as a wall mounted cantilever canopy/conservatory without any ground posting, on the basis of my observations during my site visit, the canopy is not a conservatory.
23. It follows that the canopy does not meet the conditions set out in Schedule 2 Part 1 Class A of the GDPO either in terms of being constructed of similar materials to No. 107 nor dissimilar materials but constituting a conservatory.

24. For the reasons set out above neither the boundary fence nor the canopy constitutes permitted development and in the absence of any other evidence to show that they do not constitute a breach of planning control the appeal fails under ground (c).

Ground (a) and the Deemed Planning Application (DPA)

25. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Background

26. In addition to the enforcement appeal referred to above the site has also been the subject of an appeal under s78 of the Town and Country Planning Act 1990 (the planning appeal). The planning appeal (Ref. APP/Q0505/D/19/3236008) related to the raising of ground levels in the rear garden and a rear boundary fence in excess of permitted development parameters. Although the raising of the ground levels does not form part of the BPC in the current case, the Inspector's decision regarding the fence is relevant to the determination of the current appeal.
27. I do not have the full details of the planning appeal before me, but it is clear from the Inspector's decision in that case that he was dealing with the same fence as is before me with the exception of that part which runs between the side of No. 107 and the boundary with Romsey Mews.
28. The Inspector in the planning appeal concluded that the fence was harmful to the character and appearance of the area and the living conditions of neighbouring occupiers with regard to outlook.
29. The Inspector also refers to the canopy which he describes as follows:
- 'part of the new fence supports a canopy along the flank of the appeal property'.
- He makes no further reference to the canopy and it is not referred to in the description of the proposed development in the banner heading of the planning appeal decision.
30. Bringing all of these points together it is reasonable to conclude that the Inspectors decision on the planning appeal is a material consideration in relation to the fence but not to the canopy.

Main Issues

31. The main issues in this case are the effect of the rear boundary fence and canopy on:
- the character and appearance of the area, and;
 - the living conditions of neighbouring occupiers with regard to outlook.

The rear boundary fence

32. The main issues before me are the same as were before the Inspector for the planning appeal. The appellant has not brought forward any new evidence to address the harmful impacts of the fence which formed the basis of the

planning appeal being dismissed. The planning appeal was determined against policies in the Cambridge Local Plan 2018 which remains the development plan and although the revised Framework has been published my attention has not been brought to any revisions which address the harm identified by the previous Inspector.

33. However, the current appeal relates to an enforcement notice. Unlike the planning appeal it is relevant to consider the implications of the requirements of the notice because in this case these include a potential fallback position which is open to the appellant in contrast to complete removal of the fence. The issue of fallback does not appear to have been before the Inspector who dealt with the planning appeal.
34. Requirement (i) of the notice which is set out in full in the banner heading essentially allows the appellant the option to retain the rear boundary fence structure provided that its height is reduced to accord with the parameters of permitted development rights. The consequence of this is that a substantial part of the fence could remain in situ once the notice has been complied with.
35. In its statement the Council refers to the height of the fence measured along the boundary to Romsey Mews as 2.17 metres in height. The appellant disputes this measurement, but even taking 2.17 metres as the correct height, the reduction in height required to comply with the notice would be in the region of 17 cm. In terms of the impact of the fence on the character and appearance of the site and the living conditions of neighbouring occupiers, a decrease in height by such a limited amount would reduce but not eliminate the harmful impacts.
36. A comparison between the adverse effect of the current fence, as determined by the previous inspector, and the extent of the fence which could be retained whilst being fully compliant with the notice, leads me to conclude that the difference in terms of harm to character or appearance and living conditions between the two potential outcomes would not be significant. Therefore, on the basis of the degree of impact arising from the potential fallback position, it would be disproportionate to refuse to grant the DPA in respect of the fence as it has been constructed.

The canopy

37. I have concluded above that the planning appeal decision is not material to my consideration of the effect of the canopy in relation to the main issues.

Character and appearance

38. The canopy which has been erected between the side of No. 107 and its boundary wall with Romsey Mews is an unusual feature and without precedent in the immediate environs of the site. However, it is of modest proportions and the cantilevered supports match the window frames of the dwelling and the side gate. Given the range and colours of roofing materials in the area which include brown, grey and red tiles/slates, the use of a lightweight, plastic/polycarbonate roof is not inappropriate in the site context and the canopy does not appear unduly prominent in the street scene.
39. The Council refers specifically to the visibility of the canopy from Romsey Mews. I have dealt with this issue below as part of my consideration of the effect of the development on the living conditions of the occupiers of

neighbouring houses. However, for completeness, when I viewed the canopy from Romsey Mews, I did not find its appearance to be at odds with No. 107 nor the immediate site context.

40. I conclude that the canopy does not have a harmful effect on the character and appearance of the site and the surrounding area. This development is therefore in accordance with Policies 55 and 56 of the Local Plan which supports development which responds positively to its context and which creates successful places. This development also accords with the revised Framework insofar as it relates to the achievement of well-designed places.

Living conditions

41. The canopy is visible from the properties in Romsey Mews, particularly Nos. 5 and 6 where it abuts the fence which forms the boundary with these properties. The Council says that the windows facing the site serve single aspect rooms and there is no information before me to suggest that that is not the case. However, there is a yard between the front elevations of the buildings and the position of the canopy which while attractively planted, serves principally as access to the front doors and storage space, including for refuse bins.
42. In combination the separation distance between the canopy and the windows in the neighbouring dwellings, the modest size of the canopy and the use of the yard space, significantly reduce the effect of the canopy on the outlook from the neighbours' windows. Whilst it is visible the canopy does not have a significantly harmful effect on the outlook from the windows in Romsey Mews.
43. I conclude that the canopy does not have a harmful effect on the living conditions of neighbouring occupiers with regard to outlook. The development is therefore in accordance with Policies 55 and 56 of the Local Plan which supports development which responds positively to its context and which creates successful places. The development also accords with the revised Framework insofar as it relates to the creation of places with a high standard of amenity for existing and future users.

Conditions

44. The Council has not provided a comprehensive list of conditions which it considers should be imposed if planning permission is granted. In this case as the works have already been completed, a standard commencement condition is not imposed, and I have not found that there are any other matters which need to be controlled by condition.

Conclusions

45. I conclude that, on the basis of the effects of a potential fallback position, it would be disproportionate to refuse the DPA for the fence. Furthermore, I conclude that the canopy does not have a harmful effect on the character or appearance of the area or the living conditions of neighbouring occupiers with regard to outlook. Consequently, it accords with the development plan and in the absence of any other material considerations the DPA should be granted for the canopy.

46. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected.

47. The appeal on ground(f) does not therefore fall to be considered.

Sarah Dyer

Inspector