



Appeal Decision

Site visit made on 3 December 2021

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

an Inspector appointed by the Secretary of State

Decision date: 06 January 2022

Appeal Ref: APP/M4320/C/21/3283819

1 Heather Close, Formby, Liverpool L37 7HN

- 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 Miss Suzanne Deary against an enforcement notice issued by Sefton Metropolitan Borough Council.
 - The enforcement notice was issued on 3 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission and within the last four years, the erection of a brick wall with pillars in excess of 1 metre in height to the front boundary of the land as shown on the attached plan entitled "wall plan" between points A and B.
 - The requirements of the notice are to remove the wall and pillars from the property OR lower the height of the wall and pillars to no higher than 1 metre in order to comply with permitted development rights.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(e), (f) and (g) of the 1990 Act as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Background

2. The enforcement notice concerns a boundary wall with pillars. The appellant sought planning permission, retrospectively, for the wall but the application was refused by the Council¹. The subsequent appeal was dismissed². The appellant argues that there are numerous other examples of higher fences and walls in the local area, including the immediate vicinity, and there have been no objections to the unauthorised development. Further, it is suggested that the landscaping, which has been planted adjacent to the wall, will become established within 12 months and would provide suitable screening. Also, it is explained that the construction of the wall is such that it would not be possible to lower it, as required, without damaging that part which would remain under permitted development rights. The resulting wall would become an eyesore.
3. These arguments all concern the merits of the development, which are its impact on the character and appearance of the area and how any impact may be mitigated. These matters all relate to a ground (a) appeal, that planning permission should be granted for the matters alleged. However, ground (a) has not been pleaded and I am unable to take these considerations into account.

¹ Ref DC/2020/02369.

² Ref APP/M4320/D/21/3269181 dated 18 May 2021.

4. I understand that a previous enforcement notice was withdrawn as it contained errors relating to the extent of the unauthorised wall, and there was no location plan. Those errors were resolved when the second notice was issued. There is no evidence before me that the current notice is invalid.

The ground (e) appeal

5. The main issue to consider is whether the appellant has shown, on the balance of probability, that the notice was not served as required by section 172 of the 1990 Act as amended and, as a result, there has been substantial prejudice. The appellant argues that the paperwork served by the Council was incorrect and incomplete.
6. Section 172(2) requires that a copy of an enforcement notice shall be served on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
7. The Council has provided a completed copy of the Planning Contravention Notice, dated 18 June 2021, which lists the names of the occupiers and owners of the appeal property. This information was cross referenced against the Land Register and Council Tax records. The Council has confirmed that the notice was served on all the owners and occupiers identified through this process. In the absence of any evidence to the contrary, I am satisfied that the notice was served as required. The appeal on ground (e) fails, therefore.

The ground (f) appeal

8. The ground (f) appeals are that the steps required by the notice to be taken, or the activities required 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. While the connection is not explicit, the wording of Section 174(2)(f) of the 1990 Act links back to Section 173 which provides that an enforcement notice shall specify the steps to be taken, or activities to cease, in order to achieve, wholly or partly, remedying the breach or remedying any injury to amenity. In this case, the notice requires the removal or alteration of the wall so that it conforms with the relevant permitted development limitations. Hence, its purpose is to remedy the breach of planning control. I must consider whether the requirements exceed what is necessary to achieve that purpose.
9. Deemed planning permission is granted by virtue of Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns gates, fences and walls. Under A.1. development is not permitted by Class A - *if (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed— (i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons; (ii) in any other case, 1 metre above ground level.* The appeal site is not a school and the limitation is 1 metre.

10. The wall has been constructed adjacent to a highway without planning permission and parts of it exceed 1 metre in height. This constitutes a breach of planning control. In order to remedy the breach, the unauthorised development must be removed or altered so that it would fall within the limitations of development permitted under the GPDO. This is what the requirement sets out, which is not excessive.
11. The appellant indicates that the injury to amenity could be remedied through landscaping. If I were to accept this argument, I would need to grant planning permission for the wall, as built, and impose a condition to ensure the landscaping is maintained. However, as explained, there is no ground (a) appeal and no mechanism for me to grant planning permission. In any event, this would not achieve the statutory purpose behind the notice, which is to remedy the breach of planning control.
12. I conclude on this matter that the steps required by the notice are not excessive to achieve its statutory purpose and the appeal on ground (f) must fail.

The ground (g) appeal

13. The ground (g) appeal is that the time required for compliance with the notice falls short of what should reasonably be allowed. The appellant is seeking 12 months to allow the landscaping to grow, which it claimed would screen the wall.
14. I understand the appellant's intentions. However, if I were to allow 12 months for the landscaping to become established, the breach of planning control would remain and the notice would still have to be complied with. This would not achieve the appellant's aim, which is to retain the wall as built. The issue of whether or not the development would be adequately screened by planting concerns the planning merits, which have been previously considered and are not relevant to this appeal.
15. I conclude, therefore, that the two months allowed for compliance with the notice is reasonable and proportionate and the appeal on ground (g) fails.

Conclusion

16. For the reasons given above, I consider that the appeal should not succeed.

D Moore

Inspector