



Appeal Decision

Site visit made on 12 January 2022

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 14th January 2022

Appeal Ref: APP/T2405/C/21/3282382

Land at 85 Turnbull Drive, Braunstone Town, Leicestershire, LE3 2JW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Sevim Aslan against an enforcement notice issued by Blaby District Council.
- The notice was issued on 13 August 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a boundary treatment and gate in excess of 1m adjacent to the highway (shown blue on the attached plan); and the unauthorised erection of a single storey side extension and attached canopy (shown hatched green on the attached plan)
- The requirements of the notice are:
 1. Remove from the land the entirety of the boundary treatment and gate which exceeds 1m in height, including the concrete posts, gates and pillars and gravel board.
 2. Remove from the land the entirety of the single storey side extension and attached canopy.
- The period of compliance with the requirements is 4 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.

Summary of Decision: The appeal is dismissed subject to corrections to the notice

Decision

1. It is directed that the enforcement notice is corrected by
 - 1) Deleting the first requirement in full and substituting it with
"Reduce the height of the boundary treatment and gate including the concrete posts, gates and pillars and gravel boards adjacent to the highway (shown blue on the attached plan) to 1 metre."
 - 2) Delete the words "the entirety of" from the second requirement so that it reads
"Remove from the land the single storey side extension and attached canopy."
2. Subject to these corrections, 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.

The Notice

3. Irrespective of the grounds of the appeal, the Inspector has a duty to put the notice in order. The first requirement refers to removing the entirety of the boundary treatment and gate in excess of 1m in height, including the concrete posts, gates and pillars and the gravel boards. However, the Council is requiring a reduction in the height of the existing boundary treatment which is included in the notice to 1 metre and the reference to the entirety is out of context when the lower part of the boundary treatment can remain.
4. I will therefore correct the first requirement of the notice to simply refer to a reduction in height to 1 metre. The use of the word "entirety" in the second requirement is superfluous and can be deleted. As I have clarified the wording of the requirements but not altered their substance, I do not consider that any party is caused injustice by these corrections.

The appeal under ground (c)

5. An appeal under ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof is on the appellant to show that there has not been a breach. The breach of planning control alleged is the carrying out of operational development. Section 55 (1) of the Act sets out what constitutes development and it includes the carrying out of building operations. The erection of the boundary treatment and the erection of an extension are development for the purposes of the Act. Section 57 of the Act then states that planning permission is required for development subject to listed exceptions.
6. Although the appellant states that the side extension was "*already erected and in place when the property was purchased,*" in the appeal form, the appellant states that she replaced the existing outhouse when she purchased the property. The Council has provided a Google street view Image dated April 2019 which shows a modest wooden shed with a pitched roof. The appeal extension is made of different materials has a different style of roof and is larger than the wooden shed.
7. I am satisfied that the side extension that is being enforced against is not the same building as the wooden shed that existed in 2019. For the appellant to succeed under ground (c), she therefore has to show that the existing development being enforced against has planning permission.
8. The appellant has not provided any information to show that any part of the development has either express planning permission or benefits from general permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015. As the development does not have planning permission, there has been a breach of planning control and the appeal under ground (c) must fail.

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

Main Issue

9. The main issue is the effect of the development on the character and appearance of the area.

Reasons

10. The residential character of the area is made up of largely two storey semi-detached dwellings which form a linear pattern along the roads with largely open frontages with low level boundary treatments. The appeal site is situated in a prominent location on the corner of Turnbull Drive and Ravenhurst Road. The corner location means that there is additional space to the side of the appeal site and in that respect the appeal site is in a similar position to No 83 Turnbull Drive (No 83) which is on the opposite corner.

Boundary Treatment

11. The element of the boundary treatment and gate that are included in the notice are on the side boundary facing Ravenhurst Road. The boundary treatment is made up of stone effect gravel boards with concrete posts and a slightly higher double gate with railings with a black solid infill which provides access to a garage at the rear of the appeal dwelling.
12. Whilst No 83 also has a low boundary treatment to the front and then a higher boundary treatment to the side of Ravenhurst Road but the use of brick is more in keeping with the dwelling house to which it relates and of the surrounding area than the use of stone effect gravel boards. The height of the boundary treatment at the appeal dwelling makes the use of the different materials to other dwellings stand out more. The appellant has provided some photographs relate to a corner property on Wilnicott Road as an example of a similar boundary treatment being used elsewhere. In the example given, the side boundary treatment adjacent to the highway is wooden fencing apart from one panel of stone effect. The majority of the wooden fencing to the side boundary is also at a lower height with hedging behind it. I do not therefore find the example given to be comparable with the appeal site in terms of its side boundary treatment.
13. Due to the length of both Turnbull Drive and Ravenhurst Road, there are a number of side roads off both roads with corner properties. However, those corner properties largely follow the prevailing character of the area of boundary treatments of wooden fencing, brick and hedges or a combination of those options. Whilst the appellant has referred to the need for privacy on a corner location, there is no evidence before me that the appellant has considered other alternative boundary treatments such as hedging or different materials which are more in keeping with the character of the area. Although the appellant states that this boundary treatment is of better quality than the previous wooden fence, it is not clear why that is the case or why a replacement wooden fence was not considered if quality was an issue. The boundary treatment does have a poor finish particularly where the boundary treatment and the new extension meet.
14. The combination of the colour, use of materials and the height of the boundary treatment are incongruous and not in keeping with the surrounding area.

Single Storey Side Extension with Canopy

15. The new side extension with canopy fills the gap between the boundary of the appeal site on Ravenhurst Road and the original side extension. The canopy element is part of the new extension in that it extends from the rear of it and it is also attached to the side of the original side extension. The appeal extension

is made up of white render and has a tiled roof which sits just below the roof of the original extension. The Council puts the height of the new extension at around 3 metres. Viewed from the front of the appeal site, there is an expanse of white rendered wall which contrasts with the red brick of the appeal dwelling and nearby dwellings. The canopy element has a perspex roof with a gutter style pipe which ends half way across the roof. The different materials in terms of the white render for the extension with the largely perspex appearance of the canopy which has been added contrasts and is incongruous compared to the red brick of the dwelling and the original extension and the prevailing character of the area. The position of the extension up against the boundary treatment adds to the incongruous nature. Whilst there is a similar canopy in the garden that is in a less prominent position at the rear of the appeal dwelling. The combination of the original extension and the new extension with the canopy within a modest space to the side lacks visual cohesion.

16. I understand that the appellant does not wish to commit financially to a larger extension as advised by the Council. Nevertheless, the appellant could suggest other options to the Council which may be more acceptable in planning terms should the appellant wish to extend beyond the original extension.
17. Whilst other people that the appellant has spoken to may support the appeal, such support as with any objections are not determinative when assessing the planning merits of the development. Similarly, the Council is not alleging a change of use or issues of highway safety.

Conclusion on ground (a) and the DPA

18. The development, when assessed individually and as a whole in terms of appearance, scale, design and materials used is incongruous, over dominant and is out of keeping with the surrounding area. I do consider that the development comprising the boundary treatment and side extension with the attached canopy does adversely effect the character and appearance of the area.
19. The development is therefore contrary to Policy CS2 of Blaby District Local Plan (Core Strategy) Development Plan Document (2013) which refers to improving design quality and respecting local distinctiveness. It is also contrary to Policy DM1 of the Blaby District Local Plan (Delivery) Development Plan Document (2019) Settlement Boundary which, amongst other things, refers to development being in keeping with the character and appearance of the area as well as being of a satisfactory design and appearance. It is also in conflict with Paragraph 130 (previously paragraph 127) of the National Planning Policy Framework which refers to development being visually attractive and being sympathetic to local character. The appeal under ground (a) therefore fails.

The appeal under ground (f)

20. An appeal under ground (f) appeal requires consideration of whether the steps required by the notice to be taken 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. The steps that are required by the enforcement notice is to reduce the height of the fence and gates to 1metre above ground level where adjacent to the highway and to remove the side extension with canopy.

21. However, the appellant has not put forward any reasoning as to why the steps required by the notice exceed what is necessary to remedy the breach of planning control. The information provided on the appeal form under ground (f) relates to ground (a) and has already been addressed under ground (a) where relevant to planning merits. Whilst the requirements refer to reducing the level of the boundary treatment to 1 metre rather than complete removal, it is a matter for the appellant as whether she wishes to discuss alternative boundary treatments with the Council. However, the steps required to remedy the breach of planning control are not excessive and the appeal under ground (f) therefore fails.

Other Matters

22. Whilst the appellant has questioned the reason for the initial investigation, the Council considers that it was expedient to issue the notice based upon their assessment of the development and I am upholding the notice.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice subject to corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

E Griffin

INSPECTOR