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## Appeal Decision

Site visit made on 5 January 2022

**by Felicity Thompson BA(Hons), MCD, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 February 2022**

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**Appeal Ref: APP/R4408/C/21/3281782**

**4 Ivy Bank, Halifax Road, Thurgoland, Sheffield S35 7AL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
  - The appeal is made by Richard Kelly against an enforcement notice issued by Barnsley Metropolitan Borough Council.
  - The notice was issued on 15 July 2021.
  - The breach of planning control as alleged in the notice is without planning permission, the creation of a vehicular crossing onto a classified road.
  - The requirements of the notice are: (i) Reinstatement a permanent boundary wall in materials similar to those that were in situ at a similar height, prior to the development taking place, which will prevent motor vehicle access over the verge to the front garden of the property. (ii) Remove any related building materials from the Land, including any that may obstruct the public footpath.
  - The period for compliance with the requirements is two months.
  - The appeal is proceeding on the ground[s] set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. 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 appeal on ground (a) and the deemed planning application

2. A parking area, accessed by crossing the public highway, has been formed to the front of a traditional end of terrace house which is located next to the A629 Halifax Road, which the Council stated is a busy road.
3. The parking area is limited in size and located on the other side of the pavement. Given the size and constrained nature of the area, its use is likely to involve slow and awkward manoeuvres into and off the public highway. Such manoeuvres are likely to interfere with the free flow of traffic and result in inconvenience and unacceptable risk to the safety of users of the public highway, both drivers and pedestrians. Such risk is exacerbated by the proximity of the space to the junction serving Smithy Hill, Halifax Road and Cote Lane.
4. The highway is straight at this section and the lamppost is set back from the edge of the pavement such that I do not find that this would restrict visibility to a materially harmful degree. However, this is a neutral matter which cannot outweigh my above findings.

5. I acknowledge that the appellant's car has been broken into when parked on the road however, in the absence of substantive evidence regarding the risk of crime, this is a matter of limited weight.
6. Whilst I note the appellant's comments regarding other dropped kerbs around his property, my assessment is confined to the development as carried out which does not include a dropped kerb. As such, the existence of dropped kerbs has no bearing on my assessment in this case.
7. Overall, for the reasons given, the development is contrary to Policy T4 of the Barnsley Local Plan Adopted January 2019 which requires new development to be designed and built to provide all transport users within and surrounding the development with safe, secure, and convenient access and movement.

### **The appeal on ground (f)**

8. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
9. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the breach of planning control which has occurred. The second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.
10. In this case the enforcement notice requires a boundary wall, similar to that removed, to be reinstated. As such, I find that its purpose is to remedy the breach of planning control that has occurred.
11. The appellant suggested that they do not wish to reinstate the wall as they consider that it looks better without it and rebuilding it would prevent the cellar receiving sunlight, thus increasing the risk of damp.
12. In my view the notice is already proportionate since it only requires a wall to be reinstated and does not require the reinstatement of garden levels as they existed. Whilst I acknowledge the appellant's comments, having regard to the highway safety impacts and since the only way to guarantee that the parking area will not be used now and in the future, is to require a wall to be reinstated, it is not excessive. The appeal on ground (f) therefore fails.

### **Conclusion**

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

*Felicity Thompson*

INSPECTOR