



Appeal Decision

Site visit made on 15 March 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2022

Appeal Ref: APP/W4705/C/21/3286882
406 Livingstone Road, Bradford BD2 1QD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Rehana Najeeb against an enforcement notice issued by City of Bradford Metropolitan District Council.
 - The enforcement notice was issued on 19 October 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a wall and gates along the north-west facing (front) boundary of the land, as shown in the attached photograph.
 - The requirements of the notice are:
 1. Remove the unauthorised wall and gates from the north-west facing (front) boundary of the land; OR,
 2. Reduce the height of the wall and gates to the north-west facing (front) boundary of the land to 1.0 metre height or less; OR,
 3. Erect a wall and gates to the north-west facing (front) boundary of the land in accordance with planning permission reference 20/05117/HOU.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of 2 calendar months and the substitution of 6 months as the time for compliance in section 6 of the notice. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. I attended the appeal site at the appointed date and time. The gates to the property were locked and despite ringing the bell several times, the appellant nor any representative attended. Given that the development was clearly visible from the public highway, I informed the Council's representative that I would carry out my site visit unaccompanied and did so accordingly. I am satisfied that no party is prejudiced by my doing so.
3. It was evident from my site visit that the wall had been reduced in height from that against which the enforcement notice is directed. Nevertheless, it is incumbent on me to consider the matters stated in the enforcement notice as

constituting a breach of planning control and thus the wall as existed the date the notice was issued.

The appeal on ground (c)

4. In an appeal on ground (c), it is for the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control stated in the notice does not constitute a breach of planning control. Section 171A(1) of the 1990 Act set out that a breach of planning control constitutes (a) carrying out development without planning permission; or, (b) failing to comply with any condition or limitation subject to which planning permission has been granted.
5. Planning permission was granted on 23 December 2020 for a boundary wall and gate to front of the dwelling¹. Condition 2 of that permission set out that the development approved shall only be carried out in accordance with the approved plans. The appellant indicates that the Council agreed to grant planning permission for a wall of 1.6m in height. However, the approved plans show a wall with a height of 1.3m from ground level with a small wall railing on top. That is the wall for which planning permission was granted.
6. In contrast, the wall subject of the notice measures between approximately 2.3m and 2.5m in height from ground level. Moreover, the approved plans show a wall with a rendered finish in contrast to the exposed blockwork of the wall as built. Furthermore, the approved gates are also lower in height compared to the gates subject of the notice, albeit the precise height is not shown on the plans. Overall, it seems to me that the development subject of the notice is not the development for which planning permission was granted in 2020.
7. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for the classes of development described as 'permitted development' under Schedule 2. Class A of Part 2 of Schedule 2 states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted development. Paragraph A.1(1)(a) states that development is not permitted under Class A if 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 1m in height.
8. The wall and gates subject of the notice measure around 2.3m to 2.5m in height. They are sited adjacent to the highway of Livingstone Road to the front of the property. As a result, the wall and gates would not be permitted development under Class A of Part 2 and therefore not granted planning permission by Article 3(1) of the GPDO.
9. There is no evidence before me that any other planning permission exists for the wall and gates subject of the notice. Consequently, since the wall and gates amount to development without planning permission, the alleged breach of planning control as stated in the notice does constitute a breach of planning control.
10. The appeal on ground (c) therefore fails.

¹ LPA Ref: 20/05117/HOU

The appeal on ground (g)

11. An appeal on ground (g) is made on the basis that the time for compliance with the notice falls short of what should reasonably be allowed. The notice provides a period of two months for compliance. The appellant argues that a compliance period of 15 months would be more appropriate. It is indicated that the appellant is unable to source a builder.
12. It seems to me that 15 months would be an unduly excessive period to allow for compliance. The notice requires the wall and gates to either be removed, reduced to 1m in height or that they are built to accord with the 2020 planning permission. On the face of it that such works would not require a period of 15 months to complete. Moreover, 15 months would not overcome the planning harm with the necessary expediency.
13. Nevertheless, I note the Council are agreeable to a period of 6 months compliance. I agree that a period of 6 months would be more reasonable. It would allow the appellant sufficient time to source a builder and carry out the works necessary to comply with the requirements of the notice.
14. The appeal on ground (g) therefore succeeds to a limited extent.

J Whitfield

INSPECTOR