



Appeal Decisions

Site visit made on 23 March 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 24 May 2022

Appeal Ref: APP/Z4718/C/22/3290282 (Appeal A)

1 Thornfield Close, Lockwood, Huddersfield HD4 5HW

- 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 Mr Al Qlawi against an enforcement notice issued by Kirklees Metropolitan Borough Council.
 - The enforcement notice is dated 1 December 2021.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, an engineering operation consisting of the raising of land levels adjacent to the entrance to the site and the erection of boundary walls.
 - The requirements of the notice are: a) Remove the material from the site used to artificially raise the level of the land (circled in red on Appendix 1a attached to the notice) and return the land levels (including the slope gradient) to match to that which existed prior to the engineering operation taking place, as shown in the image on Appendix 1b attached to the notice. b) Dismantle and permanently remove the boundary walls from the site, as shown by the blue line on Appendix 2 attached to the notice.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/Z4718/W/21/3285024 (Appeal B)

1 Thornfield Close, Lockwood, Huddersfield HD4 5HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Al Qlawi against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2020/62/91470/W, dated 21 May 2020, was refused by notice dated 13 August 2021.
 - The development is proposed is single storey extensions and alterations, and alterations to boundary walls.
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Decisions

Appeal A

1. It is directed that the enforcement notice be amended by:
 - 1) The deletion of the text of the requirements paragraph in its entirety and its replacement with the following text: a) Return the land levels at the site to the levels that existed prior to the unauthorised works taking place; b) Remove the boundary walls in their entirety, as shown by the blue line on Appendix 2 attached to the notice; OR c) Reduce the boundary walls in their entirety, as shown by the blue line on Appendix 2 attached to the notice, to

a height not exceeding 1m fronting the highway, and a height not exceeding 2m in all other locations.

- 2) The deletion of the text '60 days' from the period of compliance and its replacement with the text '3 months'.
2. Subject to these amendments, Appeal A is dismissed, and the enforcement notice is upheld.

Appeal B

3. Appeal B is allowed insofar as it relates to the single storey extensions. Planning permission is granted for this development at 1 Thornfield Close, Lockwood, Huddersfield HD4 5HW in accordance with the terms of the application, Ref 2020/62/91470/W, dated 21 May 2020, and the plans submitted with it, so far as relevant to those parts of the development hereby permitted, and subject to the conditions in the attached schedule.
4. Appeal B is dismissed and planning permission is refused insofar as it relates to all other aspects of the development, including alterations to boundary walls.

Preliminary Matters

5. At the time of my site visit, the main structure of the boundary walls had been completed. However, the columns and capping stones had not been added and the stone cladding had not been applied. For that reason, I have taken the proposed drawings showing the finished development into account, in conjunction with my observations on my visit.

Appeal A on ground (c)

6. The appeal site is a detached two storey house in an area of similar dwellings. The enforcement notice that is the subject of Appeal A relates only to the changes to the boundary treatments and land levels at the property.
7. The appeal on ground (c) is that there has not been a breach of planning control. In his statement of case at Figure 2, the appellant helpfully divides the boundary wall into six sections for ease of reference. Ground (c) concerns only sections B, C, and D of the wall, which are located to the back and side of the property.
8. The appellant argues that wooden fencing that was previously in the same position as sections B and C was the same height as the new walling. He says that the boundary treatment appears much taller due to the fact that the ground was excavated to provide a more functional amenity space at the back of the house. However, heights are measured from the adjacent ground level. If the ground is lower then the overall height of the wall is greater, as a matter of fact.
9. In addition, the proposed elevations clearly show that the pillars, columns and capping would exceed the height of the top of the previous fence. As the structure as a whole would exceed the permitted 2m in height for this location, it does not fall within permitted development limits.
10. Section D is the middle section of the three along the side boundary. The appellant says that in this location, the boundary treatment as built is both a replacement of a previous boundary fence, and is permitted by Schedule 2,

Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as it does not exceed 2 metres above ground level.

11. Under ground (c), the onus lies on the appellant to provide proof that the development falls within the limits set out in the GPDO. The appellant provides existing and proposed elevations at his Appendix 1. This drawing shows the previous fence but does not give its height. The proposed wall is shown as stepping down from the back of the property to the front.
12. A number of measurements are given for the proposed wall as completed. At one point, the main part of the wall is shown as 1673mm high plus 660mm for the columns and capping, giving a total of approximately 2333mm. The next measurement along is 1414mm for the main wall plus 610mm for the columns, giving a total of approximately 2024mm. These measurements clearly take the side wall outside the permitted 2m limit for a boundary wall in this location.
13. The evidence clearly shows that the sections of the boundary wall in question do not fall within the permitted development limits of the GPDO, and so planning permission is required.
14. The appeal on ground (c) therefore fails.

Appeal A on ground (a) and Appeal B

Main Issues

15. The main issues are the effect of the development on:
 - the character and appearance of the surrounding area; and
 - the living conditions of neighbours, with particular regard to overbearing.

Reasons

16. Appeal B includes alterations to the main building by way of a single storey extension to the rear of the property and a front porch. These were approved under planning permission ref: 2019/62/91576/W. A further canopy to the front is proposed. The Council raise no objection to these elements. On the evidence before me, I have no basis on which to take a different view. As a result, I have not considered these parts of the scheme any further.

Character and appearance

17. Attached to the enforcement notice is a photograph showing the property prior to the unauthorised works. It shows that, at the front of the house, there was an open area that sloped from the level of the house down to meet the access road into Thornfield Close. This space was grassed over and was unenclosed apart from a fence along the side of the garages at No 1 and a line of planting to the rear. Now, this triangular piece of land has been raised to sit level with the house and a new retaining wall has been built around it.
18. The works have fundamentally changed the appearance of the land and its visual relationship to the surrounding area. Previously, the green slope framed the entrance to the cul-de-sac. It provided an area of landscaping that softened and complemented the appearance of the buildings. By contrast, the new retaining walls provide a hard edge to the approach. The scale and height

- of the new structure appear overly dominant in the street scene, and the loss of openness harms the appearance of the area.
19. At the back of the house, as noted above, the land has been lowered and the previous rear and side fencing has been replaced with the new walling. The side wall runs all the way along the boundary to join the new retaining wall at the front of the property.
 20. The appellant has provided at Figure 5 a photograph of the rear plot before the works were carried out. It is clear from a comparison of this photograph to the existing situation that the character of the rear plot has changed significantly. Before, the ground sloped gently up to meet a fence whose overall height was substantially less than that of the development. Now, with the lower ground level, the new rear and side walls are of a scale that are out of proportion to the modest dimensions of the rear plot. They introduce large, blank elevations which produce a silo effect, and there is no evidence that such a built form is characteristic of the surrounding properties.
 21. I agree that the rear walls do not have an impact on the street scene due to their location, but this is not a determinative matter. Policy LP24 of the Kirklees Local Plan (LP) states that good design should be at the core of all proposals, and there is no evidence to suggest that this excludes developments that are not readily visible from public locations. Furthermore, the Council's document entitled 'House Extensions and Alterations SPD' (SPD) contains advice on developments to the rear of properties, many of which will not be publicly visible at all.
 22. My attention has been drawn to other examples of stone boundary walls at Stone Gate Court, Hanson Lane and Moor End Road, all of which are within 200m of the appeal site. On this basis, the appellant argues that stone walls are a fundamental part of the character of the surrounding area. However, it is clear that the streets referred to have a different visual character, and I see no reason why the development should relate to them and not to its immediate environs.
 23. The National Planning Policy Framework (NPPF) states that development should be sympathetic to local character, including the surrounding built environment and landscape setting. Within Thornfield Close itself, stone walling is not a predominant characteristic, and there is no visual precedent for the proposed column and capping detail.
 24. I therefore conclude that the groundworks and the construction of the new boundary walls unacceptably harm the character and appearance of the appeal site and the surrounding area, contrary to LP Policy LP24, insofar as it requires that the form, scale, layout and details of all development should respect and enhance the character of the townscape, and with the NPPF.

Living conditions

25. The Council argue that the scale and form of the walls, with the columns and stone tops in addition, result in an obtrusive and overbearing visual impact and overshadowing at neighbouring properties. It is therefore necessary to consider whether material harm to the living conditions of neighbours has arisen from the development of the boundary walls. I am satisfied that no such harm arises from the front section of the new boundary wall.

26. To the side and abutting the appeal site is the dwelling at 32 Thornfield Road. The appellant contends that the height of the wall between the two dwellings is 2m and below, although this is not reflected by the evidence discussed above in relation to ground (c). Nonetheless, he says that the previous boundary treatment was of a similar height, and so the development does not affect the living conditions at No 32 to a greater extent than previously.
27. In terms of overshadowing, No 32 sits to the north of the appeal site, and so the main body of No 1 already has an overshadowing effect on No 32. This situation is borne out by the submitted sun path evidence. I am therefore satisfied that when complete, the new boundary wall would not have a materially greater effect in this regard.
28. However, the photographs of the incomplete wall from No 32 show that it is a substantial structure that dominates the garden, which is set at a lower level. With the columns and coping in place, the wall would have a more overbearing effect on occupiers using the garden. The outlook from No 32 towards the property at No 1 would be lessened.
29. These factors would result in material harm to the living conditions of neighbours at No 32, resulting in unacceptable conflict with LP Policy LP24, insofar as it requires development to provide a high standard of amenity for neighbouring occupiers.

Conclusion

30. For those reasons, Appeal A on ground (a) and Appeal B, insofar as it relates to the new ground levels and boundary walls, are dismissed.

Appeal A on ground (f)

31. Ground (f) is that the steps required to comply with the requirements of the notice are excessive.
32. The enforcement notice requires the material comprising the raised land level at the front of the house to be removed from site. The appellant states that the materials used to facilitate this change were sourced from the excavation of the rear garden at the appeal site. That being the case, he argues that it would be logical to return the materials to the rear of the property and reinstate, as near as practically possible, the previous level of the rear garden.
33. He also raises concerns that the removal of the back wall could cause undue harm to the property at 5 Stone Gate Court to the rear of the appeal site. I have also taken into account the concerns of the occupants of No 5 that their garden land could collapse into the appeal site without the wall.
34. With the previous land levels reinstated, the appellant suggests that lesser steps for the boundary wall would be to reduce it to a height that does not exceed 2 metres where it is away from the highway. Section F, which fronts the highway, would be limited to a height not exceeding 1 metre so as to fall within permitted development rights.
35. The Council do not accept these suggestions, stating that it is clear from the wording of the notice that its purpose is to remedy the breach of planning control, and that no lesser steps than those specified in the notice will achieve its purpose. However, any development constructed under permitted

development rights would be lawful by definition and would not fall to be considered against the development plan policies. There is no evidence to suggest that the relevant permitted development rights relating to boundary enclosures are not available at the appeal site.

36. Drawing these factors together, I have therefore directed that the enforcement notice be amended to require that the land levels be returned to their previous state, and to include the step of reducing the height of the walling to fall within permitted limits.

37. To that extent, Appeal A on ground (f) succeeds.

Appeal A on ground (g)

38. Ground (g) is that the time period of 60 days given to comply with the notice is too short. The appellant argues that due to the Covid-19 pandemic, there may be a shortage of suitably qualified tradespeople to undertake the works required. He considers that an extended time limit of six months would be reasonable.

39. At the time of writing, there are currently no pandemic restrictions in place, although I am aware that there may still be some backlogs to clear in terms of construction work. The requirements would not be particularly difficult, but could be relatively time consuming, considering that a significant amount of earth needs to be moved in addition to the changes to the boundary walls.

40. It seems to me unlikely that the appellant would be able to agree a contract for the works and have them started and completed within 60 days. Conversely, there is no evidence that such a project would take six months.

41. Taking all of these circumstances together, I consider that an extension of time to three months would be reasonable for the completion of the requirements.

42. To that limited extent, the appeal on ground (g) succeeds.

Conclusion

43. For the reasons above, Appeal A succeeds in part on grounds (f) and (g), but is dismissed on grounds (a) and (c), and the enforcement notice, as amended, is upheld.

44. I have found the proposed single storey extensions to be acceptable and compliant with the development plan as a whole. Conversely, I have found that the boundary walls are unacceptably harmful, thus conflicting with the development plan as a whole.

45. I therefore conclude that Appeal B should partially succeed in respect of the proposed single storey extensions only. In all other respects, Appeal B is dismissed.

Elaine Gray

INSPECTOR

APPEAL B - SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans insofar as they relate to the proposed single storey extensions and alterations to the dwelling: Site location plan; 21003-PL01; 21003-PL02; 21003-PL03; FO1/HS/08; FO1/HS/07; FO1/HS/06; FO1/HS/03; FO1/HS/02; FO1/HS/01.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.