



Appeal Decision

Site visit made on 24 May 2022

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2022

Appeal Ref: APP/P3040/C/22/3292434

Granby Hall, Chapel Lane, Granby, Nottinghamshire NG13 9PW

- 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 Peter Dunn against an enforcement notice issued by Rushcliffe Borough Council.
 - The enforcement notice, numbered 21/00082/BUILD, was issued on 13 January 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a boundary wall and an associated access gate in the location shown by a bold green line on plan 2 attached to the notice, which is adjacent to the highway and which exceeds 1m in height. Also without planning permission, development to the boundary wall, namely increasing the height of the wall to 1.8m in the location shown by a bold blue line on the plan 2 attached to the notice, which is adjacent to a highway.
 - The requirements of the notice are: (1) Reduce the boundary walls and associated access gate (in the locations shown by bold blue and green lines on plan 2 attached to the notice) to a height not exceeding 1 metre, and (2) Remove all demolition material from the Land and make good any damage caused by requirement (1).
 - The period for compliance with the requirements is six months from the date the notice takes effect.
 - 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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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a boundary wall and associated access gate and the increase in height of boundary wall to 1.8m on land at Granby Hall, Chapel Lane, Granby, Nottinghamshire NG13 9PW referred to in the notice.

Preliminary Matter

2. The appeal was submitted in the name of Mr Peter Dunn and Mrs Maia Dunn. In this case, following the submission the appeal made on behalf of Mrs Dunn has been withdrawn such that the appeal before me proceeds in the name of Mr Peter Dunn.

The Appeal on Ground (c)

3. An appeal on ground (c) is made on the basis that the matters alleged in the notice do not constitute a breach of planning control. The appellant contends that the wall and gates constitute 'permitted development' in accordance with

Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

4. Under the terms of paragraph A.1(a)(ii) of that Part development any gate, wall or means of enclosure is not permitted if it is adjacent to a highway used by vehicular traffic and exceeds 1m in height. The entrance gates and driveway to the property are accessed from a small turning head at the end of Chapel Lane. That turning area, and the small grass verge immediately to the front of the wall, clearly forms part of the public highway, as depicted in documentation provided with the appeal. The tarmacadamed area within the public highway runs directly up to the entrance gates and the piers at either side.
5. As such, it is clear that the easternmost section of the enclosure, including the wall running up to the boundary with the former Methodist Chapel, the entrance gates and the piers at either side are directly adjacent to the public highway.
6. It appears that the driveway branching off from the public highway, leading to The Granary and a limited number of other properties, is a private drive, rather than part of the highway. There does not appear to be a public right to pass and repass over that drive. However, that has little bearing on my decision. The wall to the left of the entrance gates is essentially a single structure and where part of a structure is adjacent to a highway used by vehicular traffic and above 1m in height, the structure as a whole will fail to comply with the terms of paragraph A.1(a)(ii). It is not possible to break down a single structure into smaller component parts. The wall running alongside the private driveway terminates at the gate pier which is directly adjacent to the public highway and is clearly above 1m in height at that point. Consequently, the structure, taken as a whole, amounts to a means of enclosure above 1m in height which is adjacent to a highway used by vehicular traffic.
7. It follows that the means of enclosure does not accord with the conditions and limitations of permitted development rights set out in Class A, Part 2, Schedule 2 of the GPDO and does not benefit from planning permission granted via the GPDO. As such, the development does amount to a breach of planning control and the appeal on ground (c) must fail.

The Appeal on Ground (a)

8. The main issues in the appeal on ground (a) are:
 - i) The effect of the enclosure on the character and appearance of the area, including whether it would preserve or enhance the Granby Conservation Area (the CA); and
 - ii) If the proposal would cause harm to the character and appearance of the area and the CA, whether that harm is outweighed by other considerations to an extent that planning permission should be granted for the development.
9. The CA boundary encompasses much of the built confines of the village which is set around an historical street pattern, with narrow lanes surrounding three small village greens, one of which is directly to the front of the access to Granby Hall. The Granby Conservation Area Appraisal (the CAA) identifies numerous listed and unlisted buildings which make a positive contribution to

the area, including Granby Hall, which is a grand Victorian dwelling on the edge of the central core of the village. The CAA also notes the variety of boundary treatments within the village and the tendency for these to be closely adjacent to the highway, particularly in the central core.

10. The Townscape Appraisal at Appendix 2 of the CAA identifies that Granby Hall makes a positive contribution to the CA and views across the garden area to the front of the Hall, as were previously available, are identified as being an 'important vista' within the village. The associated sense of openness provided by the garden and the contrast with the tightly packed central core of the village highlights the relative grandeur of the Hall and is also indicative of the evolution and historical expansion of the village over time. Whilst walls of varying height may be found elsewhere in the CA, the particular circumstances of the appeal site are that positive views have been afforded into the garden historically.
11. It is the case that the situation within the garden has altered since the CAA was produced. A tennis court enclosed by mesh fencing has been constructed on part of the previous lawned area and two trees were removed to facilitate that work. Retrospective planning permission was granted for the court in 2019. Whilst those alterations have undoubtedly reduced the verdant feel of the garden, the fencing is lightweight such that the vista of the Hall, as identified in the Townscape Appraisal, would not have been impacted to a significant degree.
12. In contrast, the added height of the wall along the boundary has significantly reduced the visibility from the public realm across the garden towards the Hall. In fact, that would appear to have been one of the main purposes of the enclosure, with the appellant expressing a desire for greater privacy. The wall itself is well-built, with simple but attractive detailing around the coping, bricks that blend in well with surrounding properties and simple gate piers. The wooden gate is not overly elaborate and sympathetic in terms of its material. The position of the enclosure, close to the boundary, replicates the position of the former wall and is consistent with the general pattern within the CA, as described above. Therefore, the structure, of itself, it is not unattractive.
13. However, notwithstanding its individual qualities the visual impact of the structure is undoubtedly less appealing than the more open vista that was previously afforded of the Hall and garden. The relative sense of openness and grandeur that previously existed has been diminished. In that sense, the boundary structure has failed to preserve or enhance the character and appearance of the CA.
14. For that reason, the development fails to conform to the aims of Policy 11 of the Rushcliffe Local Plan Part 1: Core Strategy (2014) (the CS) which, amongst other things, states that proposals will be supported where the historic environment and heritage assets are conserved and/or enhanced. It would also contravene the requirements of Policy 28 of the Rushcliffe Borough Local Plan Part 2: Land and Planning Policies (2019) (the LP) which requires development proposals to show and understanding of the significance of and be sympathetic to the character and appearance of heritage assets, taking account of various matters relating to design and siting, including the impact on views. It would also be contrary to the design related aims of policy 10 of the CS.

15. The harm to the CA is less than substantial, having regard to the localised impact, the quality of the wall itself and the alterations to views of the Hall and gardens that have already been permitted as a result of the tennis court and associated fencing. However, any harm to a CA is a matter of significant weight having regard to the statutory duty to pay special attention to preserving or enhancing the character and appearance of the area.
16. In line with paragraph 202 of the National Planning Policy Framework less than substantial harm should be weighed against any public benefits of a proposal. No public benefits have been put forward in this case. However, the appellant has advanced a fall-back argument on the basis that an alternative fence or wall, of a height of up to 2m will be constructed running parallel to the existing boundary but set slightly within the garden in the event that the enforcement notice is upheld. A lawful development certificate for such an enclosure was granted in March 2022.
17. The Council maintains that the presence of a potentially more harmful alternative should not be used as a rationale for allowing development that causes harm to the CA. However, if there is a real prospect of an alternative form of development taking place the Courts have held that can be a material consideration in considering whether to grant planning permission. In this case the appellant has set out a very clear rationale for erecting a boundary enclosure of up to 2m in height which he feels is necessary to afford greater privacy to those using the tennis court and garden and added security to the property. The fact that the existing wall has been heightened, no doubt at significant cost, is an indicator that the occupants value the benefit of added privacy.
18. The presence of the tennis court indicates that this portion of the garden is used more intensively than it previously may have been and having read the submissions I am satisfied that there is a very realistic and likely prospect of an alternative boundary treatment, up to 2m high, being erected in the event that I were to dismiss the appeal and uphold the notice. That may be a fence as depicted in the LDC or the appellant could choose to erect a wall of the same height in that position. It follows that views into the garden and Hall are likely to be disrupted regardless of my decision in this case.
19. In addition, the proposed location of the fence, set slightly into the garden sufficiently to avoid being 'adjacent' to the highway would result in a narrow strip between the position of the current wall, which would be lowered if the notice was upheld, and the newly erected fence or wall. It is not clear if that strip would remain as lawn or be planted with shrubs but the presence of two boundaries would add clutter to the environment. The higher boundary set within the site would also be at odds with the prevailing pattern of walls and fences being close to the highway edge.
20. Overall, it would result in a somewhat convoluted situation that would cause more harm to the character and appearance of the CA than the present structure which, aside from its impact on views into the site, is reflective of the materials, location and style of boundary treatments seen elsewhere. In my view, the greater harm that would arise from the fall-back position, added the very realistic prospect of that development taking place is a matter which attracts very significant weight in the planning balance.

21. Given the particular circumstances described above, the significant weight I attach to the harm caused by the existing wall and the conflict with local and national planning policy is clearly outweighed by the weight I attach to the fall-back scenario which would be likely to result in development that would be more harmful to the CA. Consequently, the appeal on ground (a) shall succeed and I shall grant planning permission for the development that has already been undertaken and quash the enforcement notice. No conditions have been put forward by either party in the event that I allow the appeal and I am satisfied that none are necessary to make the development acceptable in planning terms.
22. Given my decision in relation to the appeal on ground (a) it is not necessary for me to consider the appeal on grounds (f) and (g).

Chris Preston

INSPECTOR