



Appeal Decisions

Hearing held on 2 August 2022

Site visit made on 2 August 2022

by **M Madge DIPTP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 September 2022

Appeals A, B, C and D Ref: APP/V4630/C/21/3287934, 3287935, 3297936 and 3287937

Land at 53 Charlemont Road, WALSALL WS5 3NQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Baldev Singh, Appeal B is made by Mr Balvir Kaur, Appeal C is made by Mr Gurjpaul Singh Binning and Appeal D is made by Mr Sukpreet Kaur Binning against an enforcement notice issued by Walsall Metropolitan Borough Council.
- The notice was issued on 29 October 2021.
- The breach of planning control as alleged in the notice is without planning permission on the Land,
 - 3.1 The erection of brick walls, pillars and railings between points B-C-D-E-F-G inclusive, marked in the approximate positions on the attached plan.
 - 3.2 The erection of brick retaining walls and timber fence panels between points A-B, and G-H, marked in the approximate positions on the attached plan.
 - 3.3 The alteration and raising of ground levels in the area hatched blue on the attached plan.
 - 3.4 The laying of a hard surface in excess of five square metres in the area hatched blue on the attached plan.
- The requirements of the notice are set out in Annex 1 attached to this decision.
- The periods for compliance with the requirements are:
 - 3 months in the case of 5.1.
 - 5 months in the case of 5.2, 5.3 and 5.4.
 - 8 months in the case of 5.5, 5.6, 5.7 and 5.8.
 - 2 years in the case of 5.9.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) of the Town and Country Planning Act 1990 as amended and an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeals, B, C and D are proceeding on the grounds set out in section 174(2)(b), (c), (f), (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision. Appeals B, C and D are dismissed.

Matters concerning the notice

1. The matters alleged are clearly and precisely identified. They relate to works carried out following the erection of an approved replacement dwelling. Normally, the requirements specified in a notice would seek to return the land to its condition before the alleged matters occurred. Such requirements in this case would return the land to its condition before the replacement dwelling was erected. The appeal parties agree that this would lead to significant problems in terms of the regraded land being higher than the finished floor level of the replacement dwelling.

2. The Council has sought to address the levels issue, but as a result, the wording of the requirements goes beyond what is necessary to address the breach of planning control. While there was discussion as to how the requirements could be appropriately varied, the only practicable solution would require a scheme for regrading the land and subsequent landscaping to be submitted for approval. Requiring such a scheme to be submitted would however lead to imprecision, which would potentially invalidate the notice.
3. Appeals on ground (f) are to be considered if the other appeal grounds are unsuccessful. I will therefore return to the requirements under ground (f) if necessary.

Preliminary matters

4. It was agreed that the replacement dwelling has been erected in the correct position within the site and that it has been erected in accordance with the 2018 PP. It was further agreed that the 2018 PP did not seek to control land levels, areas of hard surfacing or means of enclosure.
5. The loss of mature hedgerows and lawn is unfortunate, however the retention of these features was not conditioned in the 2018 PP. Furthermore, permitted development rights were not removed in relation to means of enclosure or the laying of hard surfacing.
6. Both the appellant and the Council confirm that a scheme of replacement tree planting has been agreed, in compliance with the conditional approvals given to fell protected trees. The agreed scheme has not yet been implemented, but it will be following the outcome of these appeals.

Appeals A, B, C and D on ground (b)

7. An appeal on this ground is that the matters alleged have not occurred as a matter of fact. The case for the appellants confirms that brick walls, pillars, railings, brick retaining walls and timber fence panels have been erected between points A-B, C-G and G-H. Furthermore, it confirms that the alteration and raising of ground levels and laying of hard surfacing in the area hatched blue has occurred. I saw this to be the case at the site visit. The matters alleged have therefore occurred as a matter of fact.
8. For this reason, the appeals on ground (b) fail.

Appeals A, B, C and D on ground (c)

9. An appeal on this ground is that the matters alleged, if they have occurred, do not constitute a breach of planning control. The onus of proof is on the appellant and the relevant test is the balance of probability.
10. The appellants do not dispute that the laying of a hard surface, alteration and raising of ground levels require planning permission. As the brick walls, railings, pillars, brick retaining walls and timber fence panels are all interconnected, it is reasonable to conclude that they have been completed as a single building operation, which I shall refer to as the means of enclosure. The appeals on this ground relate to the means of enclosure only.
11. The brick walls, railings and pillars have been erected parallel to the highway, they are however positioned well back from the boundary, within the site. The brick retaining walls and timber fence panels are attached to the pillars at

points B and G, and they are perpendicular to the highway. The appeal parties therefore agree that the means of enclosure is not adjacent to the highway, and I see no reason to disagree.

12. Part 2 of Schedule 2 of the Town and Country (General Permitted Development) Order 2015, as amended (the GPDO) at Class A confirms, subject to limitations, '*the erection...of...a fence, wall or other means of enclosure*' are permitted development. Class A.1 (b) states development is not permitted if the height of any fence, wall or other means of enclosure would exceed 2 metres above ground level.
13. Where the land level adjacent to any means of enclosure is level, measuring the height of the development anywhere along its length would provide a consistent figure. However, where the adjacent land level slopes, as in this case, the overall height of the boundary treatment will vary depending on where along its length the measurement is taken. In such circumstances, it is normally the highest part of the development above ground level that is used for determining if the limitations of the GPDO are exceeded or not.
14. Consideration also needs to be given to which ground level will be used to measure the height of the means of enclosure. In this case, the ground level within the site has been lowered at one side and raised at the other, to provide a shallow gradient sloping towards the replacement dwelling. Where such actions have occurred, and the built development abuts a boundary, it was found in *McGaw*¹ that the ground level outside the site could be used for the purpose of measuring the height of the structure above ground level.
15. The appellant suggests that *McGaw* goes further, claiming that the height above ground level should be measured from the highest point of the adjacent land outside the site. Such an approach would not necessarily provide the maximum height of the boundary treatment along its entire length, which is the dimension that the limitations in the GPDO are concerned with.
16. It may be appropriate to measure the height of the retaining walls and timber fence panels from the adjacent land outside the site. However, the brick walls, pillars and railings are located within the site. They should therefore be measured from the ground level parallel with the highway.
17. There is no dispute that the pillar, positioned approximately at point G, is the highest point of the means of enclosure above ground level. At this point, the means of enclosure is more than 2 metres in height, measured from ground level. As the means of enclosure was erected as a single building operation, it is this highest point that is relevant to determining compliance with the limitations imposed by A.1(b).
18. For the reasons given above, the means of enclosure exceeds the 2 metres height above ground level limitation set out in A.1.(b). The appeals on ground (c) fail.

Appeal A on ground (a)

19. The **main issues** are the effects of the matters alleged on:

- non-designated heritage assets;

¹ *McGaw v The Welsh Ministers* [2021] EWCA Civ 976

- the character and appearance of the street scene; and
- the disposal of surface water.

Non-designated heritage assets

20. The oldest properties along Charlemont Road are identified as 42, 44 and 51, which date from the late 19th Century and early 20th Century. Properties 38 and 39 were constructed between 1914 and 1923. The significance afforded to these properties by the Building Conservation Officer is their age, which identifies them as non-designated heritage assets.
21. No39, No42 and No44 have open plan frontages. No38 has a brick wall, approximately waist high, with high hedgerow behind and high brick pillars at its entrance. No51 has a close boarded timber fence, approximately shoulder high, with tree and shrub planting within the front garden. These properties display a variety of boundary treatments, one of which is not that dissimilar to the appeal development.
22. The lack of mature landscaping at the appeal site is the primary difference between its appearance and that of the non-designated heritage assets. As previously identified, mature landscaping at the appeal site was not required to be retained by condition on the 2018 PP and protected trees were approved by the Council to be felled. The unauthorised means of enclosure may be visually prominent in the street scene, but that does not of itself, harm the significance of the non-designated heritage assets, which is derived from their age. Negligible harm has therefore been caused to the significance of the non-designated heritage assets.
23. Some landscaping has already been carried out to screen the means of enclosure and replacement tree planting has been agreed. Furthermore, a comprehensive scheme of landscaping and future maintenance can be secured by condition.
24. For these reasons, there is no conflict with policy ENV2 of the Black Country Core Strategy (2011), which seeks to promote and protect special qualities, historic character and local distinctiveness, amongst other things.

Character and Appearance

25. As already identified, there are a wide variety of means of enclosure along Charlemont Road. The appearance of front gardens also differs, with some having large areas of hard surfacing and others displaying larger areas of soft landscaping. The length of the road between Birmingham Road and the bend is urban in appearance, with dwellings located relatively close to the road with larger areas of hard surfacing evident. The length between the bend and Queen's Road, within which the appeal site sits, is more verdant in appearance. Here, dwellings are predominantly set further back from the road behind mature soft landscaping.
26. The former dwelling and annexe were set at different levels, and they did not extend across the width of the site. The replacement dwelling has however been constructed with a consistent level and it occupies almost the full width of the site. Notwithstanding its Georgian architectural references, the replacement dwelling has a strong horizontal emphasis. While set back within the site, its massing ensures it is visually prominent in the street scene.

27. The retaining walls and timber fence panels are screened to a large extent by the brick walls, pillars and railings, and neighbouring landscape features. As such, they have no significant visual effect on the street scene. Similarly, the alteration and raising of ground levels and the laying of a hard surface have no significant visual effect on the street scene.
28. The materials and design of the brick walls, pillars and railings are in keeping with the replacement dwelling and reflect its scale and horizontal emphasis. However, the sloping nature of the adjacent ground level does contribute to a greater visual expanse of brickwork between points F and G. The provision of landscape screening would soften this expanse of brickwork and space is available for landscaping to be provided.
29. A landscaping and maintenance scheme can be secured through the imposition of a suitably worded condition. The condition should include details of species, size at time of planting, planting density, planting schedule and maintenance programme. Timescales for submission of the scheme, its implementation and future maintenance shall also be included. As the development has already been carried out, a sanction requiring its demolition and removal of all resultant debris shall be imposed, to ensure that enforcement action can be taken if the landscaping condition is not complied with. Such conditions are necessary, relevant to planning and the development, enforceable, precise and reasonable in all other respects.
30. Subject to the implementation of an approved landscaping scheme, the development complies with policies ENV2 and ENV3 of the Black Country Core Strategy (2011) and saved policies 3.6, GP2 and ENV32 of the Walsall Unitary Development Plan (2005), which seek to promote and protect the special qualities, historic character and local distinctiveness, amongst other things. There is also no conflict with the guidance in DW3 and DW9 of the Designing Walsall Supplementary Planning Document, which seeks to respect and enhance local identity and deliver a high-quality public realm.

Surface water drainage

31. The 2018 PP was conditioned that the disposal of surface water and foul sewage had to be to the main drainage system, in order to reduce the risk of creating or exacerbating a flooding problem and minimise the risk of pollution. Surface water is however being disposed of by means of soakaway and natural percolation.
32. While it has been suggested that the implemented means of surface water disposal has created or is exacerbating flooding problems for neighbouring occupiers. No evidence of this has been provided. The occupier of 55 Charlemont Road, in his oral evidence at the Hearing, advised that the development has not caused any drainage or flooding issues for their property. They also confirmed that, as far as they are aware, no problems have been caused for 55a or 55b Charlemont Road. The appellant claims that he has resolved pre-existing surface water drainage problems for No55a and No55b during the construction of his dwelling.
33. In the absence of any factual evidence to contradict the appellant's or his neighbour's claims, it is less than likely that the implemented means of surface water disposal has caused or exacerbated surface water flooding in the area.

Other matters

34. Concern relating to the number and type of vehicles being parked on the hard surfacing was raised. This large family dwelling is occupied by an extended family and Appellant C also explained that he collects cars. While the area of hard surfacing may be large, it ensures that vehicles associated with the occupation of the dwelling can be parked within the site, thereby reducing demand for on-street parking.
35. The notice does not allege that any commercial activity is being undertaken at the property. If that were found to be the case in the future, the Council could take further enforcement action.

Conclusion on ground (a)

36. For the above reasons, the ground (a) appeal succeeds.

Overall conclusion

37. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the erection of brick walls, pillars and railings between points B-C-D-E-F-G inclusive, the erection of brick retaining walls and timber fence panels between points A-B and G-H, the alteration and raising of ground levels in the area hatched blue, and the laying of a hard surface in excess of five square metres in the area hatched blue.
38. The appeals on grounds (f) and (g) do not therefore fall to be considered.

Formal Decisions

39. Appeal A 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 brick walls, pillars and railings between points B-C-D-E-F-G inclusive, the erection of brick retaining walls and timber fence panels between points A-B and G-H, the alteration and raising of ground levels in the area hatched blue, and the laying of a hard surface in excess of five square metres in the area hatched blue at 53 Charlemont Road, Walsall WS5 3NQ as shown on the plan attached to the notice and subject to the condition set out in the attached schedule of conditions.
40. Appeals B, C and D are dismissed.

M Madge

INSPECTOR

APP/V4630/C/21/3287935: SCHEDULE OF CONDITIONS

1. The brick walls, pillars, railings, brick retaining walls, timber fence panels hereby permitted shall be demolished to ground level and the hard surfacing shall be removed and all materials resulting from the demolition and removal shall be removed within 5 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a landscaping scheme shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the landscaping scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved landscaping scheme specified in this condition, that landscaping scheme shall thereafter be maintained in accordance with the programme contained in the approved landscaping scheme.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

ANNEX 1 to appeal decisions APP/3287934, 3287935, 3287936 & 3287937

The requirements of the notice are:

- 5.1 Demolish to a ground level equivalent to the level of the adjacent highway footpath, the brick walls and pillars between points B-C and F-G inclusive, marked in the approximate positions on the attached plan. Remove the railings.
- 5.2 Restore ground levels in the area hatched blue, to a level corresponding to a level plane between the inside edge of the access track marked X, and the inside edge of the access track marked Y on the attached plan, where:
 - The distance from the corner of the area hatched blue at A, to the nearest corner of the dwelling is 6.0 metres; and
 - The edge of the hatched blue area between A-H is parallel with the front of the dwelling.
- 5.3 Demolish the brick walls and pillars between points C-D-E-F inclusive on the attached plan, to the restored ground levels required at 5.2 above. Remove railings and spherical features on top of pillars.
- 5.4 Demolish the brick retaining walls between points G-H, and B-A inclusive on the attached plan, to the restored ground levels required at 5.2 above, and remove the timber fence panels between G-H and B-A inclusive.
- 5.5 Erect a wall between points A-H on the attached plan in order to:
 - Retain restored ground in the area hatched blue.
 - Retain ground between the front of the dwelling and the area hatched blue, where that ground exceeds the height of restored ground in the area hatched blue.

The height of the retaining wall shall not exceed the height of ground it retains.
- 5.6 Remove the hard surface from the area hatched blue on the attached plan. Restore the land to the following layout:
 - Restoration of dual vehicular access points as approved on proposed site layout plan of planning permission 18/0463 (copy attached).
 - Re-seed to grass, and maintain thereafter as grass, not less than 50% of the area of the hatched blue area.
 - Surface the non-grassed area of the area hatched blue, with a porous and/or permeable material to ensure surface water does not escape onto the highway or across boundaries with neighbouring land.
- 5.7 Remove entirely from the Land, all building materials, timber, equipment, machinery, waste materials arising from completion of 5.1 to 5.6 above to an approved site, licenced to accept such materials.
- 5.8 Landscape the Land to the following specification:
 - Directly between points B-G inclusive marked in the approximate positions on the attached plan, establish and maintain a holly hedge.
 - Position and plant the hedge at a distance not less than one metre, and not more than four metres, from the back of the public footpath.

- Prepare the ground by digging over a strip approximately one metre wide (0.5m either side of the planting position) and one spade blade deep. Form the soil into a ridge about 0.2m high and 0.5m wide to plant into.
- Plant the holly plants in a double staggered row, the rows being approximately 0.45m apart and the plants being approximately 0.9m apart in each row.
- Each holly plant shall not be less than one metre in height at time of planting. For bare-root plants, spread out the roots, ensuring the planting depth is correct. The point where the roots flare out from the stem should be level with the surrounding soil. On container-grown plants, scrape away the compost from the top of the root ball to reveal this point.
- Mix organic matter, such as garden compost, with the soil dug out from the hole to backfill.
- Firm the soil and compost, where in close contact with the roots and water if the soil and compost becomes dry.
- Mulch to a depth of 7.5cm, covering the width of the planting strip.

5.9 Any holly plant that dies within two years of planting, shall be replaced with another holly plant in the same position and of a size in keeping with the adjacent, live, holly plants to maintain a hedge of visually aesthetic appearance. The holly hedge shall be established to, and maintained, not higher than 2 metres above the level of the adjacent highway, being the approximate height of the holly hedge before the alleged unauthorised development took place.

APPEARANCES

FOR THE APPELLANT:

Mr Charles Robinson of TwelveTwentyOne Planning Services
Mr Gurjpaul Singh Binning
Mr Baldev Singh

FOR THE LOCAL PLANNING AUTHORITY:

Ms Alison Young – Principal Planner
Mr Ryan Harris – Enforcement Officer

INTERESTED PARTIES:

Mr Ashvin Patel of 55 Charlemont Road

PLANS

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