



Appeal Decision

Site visit made on 23 August 2022

By Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2022

Appeal Ref: APP/D0121/C/22/3294216

26 Keedwell Hill, Long Ashton, North Somerset, BS41 9DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Alex Layard against an enforcement notice issued by North Somerset Council.
 - The notice was issued on 27 January 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a fence and wall and the reprofiling of part of garden.
 - The requirements of the notice are: 1. Remove the fencing from along the northwest boundary and all resulting materials from the land. 2. Remove the block walling along the northwest boundary and all resulting materials from the land. 3. Restore the land to its original level before the construction of the brick wall and fence and remove all infill materials from the land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by deleting the word 'brick' in paragraph 5 at step 3. Subject to the variation 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.

Preliminary Matter

2. In paragraph 5 of the enforcement notice at step 2 the wall is described as being constructed in block whilst step 3 refers to a 'brick' wall. The latter is clearly a typographical error. Therefore, I shall use the power in s176(1) of the Act to vary the notice to delete the word 'brick' in step 3. As the appellant can have had no real doubt as to exactly what the notice refers to, there would be no injustice.

Ground (a) appeal

Main Issue

3. The main issue in this ground of appeal is the effect of the structure on the character and appearance of the surrounding area.

Reasons

Character and appearance

4. The appeal property contains a semi-detached dwelling. The dwelling occupies a corner plot and is set well back from the street, behind generous front and side gardens. The property is located on a mid-20th Century residential estate, largely made up of semi-detached and terraced dwellings occupying ample-sized plots in a hillside setting. Property boundaries adjacent to the street are generally defined by maturing hedges set back behind sloping grassy verges. Often the hedges have been maintained at a low height, but there are also incidences of taller planting. There are relatively few examples of solid fencing adjacent to the street in the locality. All of these factors contribute significantly to the pleasantly spacious residential character and appearance of the surroundings.
5. The enforcement notice attacks a block retaining wall faced in horizontal timber boards and a vertical close-board timber fence erected on top, together with groundworks undertaken to level out the property's front and side garden. The resulting structure is at the front and side of the dwelling, adjacent to a sloping highway verge. I am given to understand that the structure replaced a mature hedge with sloping garden land, both of which were in a poor condition. The structure runs along the property frontage for at least 30 m, its overall height rising from around 2 m to over 3 m above the level of the pedestrian footway at the south-western end.
6. Due to its solid nature, angular profiles and obviously man-made appearance, the structure exhibits visual qualities which are markedly and appreciably different to the softer shapes and the more informal, naturalistic characteristics of street-side boundary planting in the locality. The structure is also considerably and appreciably taller, as well as lengthier, than street-side fencing at adjacent property and other such fencing in the vicinity. Consequently, the structure appears as a rather stark and alien built feature in its surroundings, giving the front and side of the property an appreciably more 'defensive' appearance, both close-up and when approaching it from either direction along the street. Furthermore, compared with the pre-existing boundary treatment the structure has created a considerably more built-up and enclosed feel in the street scene. The above is all entirely at odds with the well-planted appearance and mostly low-profile built features typical of street-side boundaries in the locality and the sense of spaciousness otherwise evident in the environs.
7. The appellant proposes to train climbing plants up the street-facing side of the structure. However, such planting would be unable to soften the structure's profile or mitigate its overall height to any great degree, even over time. Moreover, as the retention of any planting could not be ensured in the longer term, it could be removed at a later date. Therefore, planting would not be effective in offsetting the visual harm caused. Similarly, reducing the overall height of part or all of the structure, or painting/staining the street-facing side, would not ameliorate its adverse visual impact to any significant extent.
8. During my visit, I also viewed the front boundary treatment at a property being developed nearby, referred to by the appellant. In that instance the front boundary proposed consists of a timber fence erected on top of a tall, repaired stone retaining wall, with a new hedge planted behind. Such an arrangement

largely respects and reflects the prevailing pattern of street-side boundaries in the vicinity of the new property. As the new hedge matures over time, it will significantly soften the appearance of the fence. Consequently, the example boundary treatment does not assist the appellant's case.

9. The above all leads me to conclude that the structure has caused significant and unacceptable harm to the character and appearance of the surrounding area. As the structure does not achieve a high quality building and place which demonstrates sensitivity to the existing local character, it fails to accord with Policy CS12 of North Somerset Council's Core Strategy. For similar reasons, the structure fails to accord with Policy DM32 of the North Somerset Council Development Management Policies Sites and Policies Plan Part 1. Additionally, the structure is inconsistent with the Council's Residential Design Guide-Section 2 Supplementary Planning Document. This advises that new residential boundary treatments should be of an appropriate scale and constructed from building materials and styles that match or complement the street scene and local built environment, without harming the character of the area.

Other Matters

10. I can understand the appellant's desire for a low maintenance boundary adjacent to the street, to provide privacy in what is in effect their principal area of garden, as well as to safeguard against future ground instability by preventing erosion. Even so, there is no firm evidence before me which might suggest that those objectives could not equally be met by other forms of boundary treatment without having the adverse visual consequences identified above. Therefore, I afford such matters limited weight. As there is no firm evidence before me to indicate that new planting undertaken at the property has improved biodiversity, I also afford this matter limited weight. The structure does not adversely affect the living conditions of occupiers of adjoining residential property or highway safety. However, the absence of such harm neither weighs in favour nor against granting permission.

Ground (f) appeal

11. The ground of appeal is that the requirements of the notice are excessive.
12. An enforcement notice can have two purposes. Firstly, it can seek to remedy the breach of planning control alleged therein, including by requiring restoration of the land to its condition prior to the breach taking place. Secondly, the notice can require the remedying of any injury to amenity which has been caused by the breach.
13. The notice does not state whether it is the former or latter of the above purposes, or both, that it sets out to achieve. However, the requirements involve the total removal of the structure. The notice does not require something which would stop short of removal, for example reducing the overall height of the structure or altering its external appearance. Therefore, the purpose of the notice must be to remedy the breach.
14. Given the above context, any steps that required less than total removal of the structure would not remedy the breach and so would not achieve the purpose of the notice. Undertaking planting on the street side of the structure or altering it in some other fashion has been dealt with in ground (a) above. In terms of ground (f), planting or other alterations would mean that the structure

remained in situ and the property would not be restored to its pre-breach condition. As a result, there is no obvious alternative to the notice requirements; no other requirement that stopped short of removing the structure would remedy the breach.

15. I appreciate that following removal of the structure it would be possible to erect a fence or similar means of enclosure adjacent to the front and side boundaries at the property, up to 1 m in height above ground level, as 'permitted development'¹. Furthermore, I acknowledge that it is possible to remedy a breach of planning control by making a development comply with the terms (including conditions and limitations) of any planning permission granted in respect of the land. This can include where 'permitted development' limits have been exceeded, even though the whole development in such a case is unlawful. Nevertheless, I highly doubt that a structure with an overall height of no greater than 1 m would achieve the appellant's objectives in terms of privacy and ground stability. Addressing those objectives will in all likelihood necessitate the provision of an alternative form of boundary treatment to replace the structure. Consequently, 'permitted development' rights do not represent a realistic 'fallback' position, it being unlikely that the structure would simply be re-erected at 1 m high immediately following removal.
16. Therefore, in my view the notice requirements remedy the breach in a proportionate manner and are not excessive. The ground (f) appeal fails.

Conclusion

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

Stephen Hawkins

INSPECTOR

¹ Article 3, Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).