



Appeal Decision

Site visit made on 4 October 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2022

Appeal Ref: APP/M3645/C/22/3298871

Land at School Plantation, Barrow Green Road, Oxted RH8 9NE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Preston, Best Holdings (UK) Ltd against an enforcement notice issued by Tandridge District Council.
- The notice was issued on 12 April 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of walls over 1 metre in height on land adjacent to a highway used by vehicular traffic and the erection of a gate over 2 metres in height in the approximate position marked with a blue hatch on the attached plan.
- The requirements of the notice are to: (i) Either remove the wall from the area hatched blue hatched on the attached plan from the site, or reduce it in height to 1 metre or less above the adjacent ground level; (ii) Either remove the gate from the area hatched blue hatched on the attached plan from the site, or reduce it in height to 2 metre or less above the adjacent ground level; (iii) Following compliance with (i) above, remove all resultant debris and unused materials from the land to an authorised place of disposal.
- The period for compliance with the requirements is: Within three months from the date on which this Notice takes effect.
- The appeal is proceeding on the grounds set out in sections 174(2)(a), (c) 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.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Procedural Matters

1. The breach of planning control alleged in the notice refers to the erection of walls over 1 metre in height and the erection of a gate over 2 metres in height in an approximate position marked with a blue hatch on the plan attached to the notice. The notice therefore identifies with reasonable clarity the location of the walls and gate on the land the subject of the notice and there is no need to clarify this further.
2. The Council's reasons for issuing the notice refer to both of the walls. The first requirement of the notice refers to a single unidentified wall, which is required to either be removed or reduced in height. This appears to be a typing error, where the contents of the notice indicate that the first requirement should refer to the removal or reduction in height of both walls. The appellant has provided detailed plans of both of the walls and has referred to both of the walls throughout their appeal submissions. I am therefore satisfied that no parties would be caused any injustice by me correcting the first requirement of the

notice so that it refers to both walls, in line with the alleged breach of planning control and the reasons for serving the notice.

3. The third requirement of the notice requires all resultant debris and unused materials to be removed from the land to an authorised place of disposal. This is unhelpful, as it is not clear what 'unused material' may comprise or where any authorised place of disposal may exist. It would be a separate matter for any persons required to comply with the notice to dispose of any resultant debris appropriately, away from the site. I shall therefore vary the notice to remove reference to 'unused material' and to only require the resultant debris to be removed from the land.
4. The appellant has advised that alterations have been made to the gate to ensure no part of it exceeds 2 metres in height, in accordance with the second requirement of the notice. I have not been presented with any evidence which demonstrates this is the case, and the Council has not commented in this regard.

Ground (c)

5. To succeed on this ground the appellant must demonstrate that the matters stated in the notice do not constitute a breach of planning control. The appellant does not dispute that the gates measured over 2 metres in height at the time the notice was issued and there is no evidence to suggest the gate was not in breach of planning control at that time. It is claimed that the walls comprise permitted development under the provisions of Article 3(1) and Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
6. Class A permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, subject to limitations. Paragraph A.1(a) states that such development would not be permitted if the height of any wall constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1 metre above ground level other than in the case of a school.
7. The appeal site is not a school. Barrow Green Road is a highway used by vehicular traffic. Parts of the walls exceed 1 metre in height above ground level. The matter in dispute between the main parties is whether the walls are adjacent to the highway.
8. There are two walls the subject of the notice: one on the northern side of the entrance to the appeal site and one on the southern side. These walls curve inwards to provide a solid edge to the vehicular entrance into the appeal site. This creates what the appellant has described as a 'holding area' for vehicles wishing to enter the appeal site. Beyond these walls, to the east, is steel palisade fencing measuring up to 1.91 metres in height, leading to the main entrance gate some 23 metres back from the edge of the highway. The Council has confirmed that it does not consider this steel palisade fencing is adjacent to the highway.
9. Plans¹ have been provided by the appellant which are annotated to show the parts of the walls that are 2.44 metres from the edge of the highway measure between 0.92 to 0.93 metres in height. Those are the closest parts of the walls

¹ Drawing number SP120522 dated 13 May 2022

- to the edge of the highway. The plans also show that between a distance of 3.3 to 4 metres from the edge of the highway, the walls raise from a minimum of 0.92 metres in height to a maximum of 1.84 metres in height. The Council has presented similar, but slightly shorter measurements.
10. There is no clarification in relevant legislation as to what 'adjacent' means. Its common dictionary definition refers to something being near or close to something else. It is a matter of fact and degree to be assessed in individual cases as to whether a means of enclosure is adjacent to a highway used by vehicular traffic or not.
 11. I have been referred to an appeal decision² relating to brick pillars, walls and gates in a different part of the country where a different Inspector found that as one act of development, those works were not adjacent to a highway used by vehicular traffic. I have been provided with a photograph of that development. There are similarities between those pillars, walls and gates and the walls the subject of this appeal in that they do not directly abut the edge of the highway and create waiting areas for vehicles. The Inspector in the appeal decision referred to found there was a substantial space between the gates and the road which was exaggerated by their angle, and that given the relatively modest nature of the development, its relationship with the highway was 'distant and oblique rather than adjacent'.
 12. The Council has described the distance of the walls from the edge of the highway as 'not substantial' and has claimed 'there is no exaggeration of distance arising from the angle of the walls to the highway'. It is also claimed by the Council that the boundary of the highway extends beyond the metalled carriageway and that the boundary of the appeal site does not abut the road surface.
 13. Aside from any land ownership issues, I take the edge of the metalled carriageway to be the edge of the highway used by vehicular traffic. The walls do not abut the edge of the highway used by vehicular traffic and are positioned roughly in line with heavily planted raised earth banks which line the eastern side of the road.
 14. Visually, the walls form part of a means of enclosure opening onto the highway. They create a waiting area for vehicles perpendicular to the highway, rather than parallel with the highway, as was the case in the other appeal decision referred to above. The relationships of the walls with the highway are not distant and oblique and the walls are not separated from the highway by any substantial space. They are positioned very close to the edge of the highway, set behind a concreted surface, and create clearly defined boundaries leading off the highway.
 15. I therefore find the walls the subject of the notice are positioned adjacent to the highway, which is used by vehicular traffic. As parts of the walls exceed 1 metre in height they do not comprise permitted development under the provisions of Class A, Part 2 of Schedule 2 of the GPDO and are in breach of planning control. The gate was in breach of planning control at the time the notice was issued.
 16. The appeal on ground (c) must therefore fail.

² Appeal reference APP/T0355/C/21/3273821

Ground (a) and the deemed application for planning permission

Main Issues

17. The appellant has not submitted a case in favour of planning permission being granted for the gate, as it has been claimed that it has been lowered in height in accordance with the second requirement of the notice. The appeal on ground (a) and the deemed application for planning permission therefore relate to the walls only, as set out in the appellant's submissions.
18. Taking the above into account, the main issues are: i) whether the walls are inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; ii) the effect of the walls on the openness of the Green Belt; iii) the effect of the walls on the character and appearance of the area; and iv) whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

Whether Inappropriate Development

19. The appeal site is located within the Green Belt. Paragraphs 147 and 148 of the Framework advise that substantial weight should be given to any harm to the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the Framework advises that the construction of new buildings should be regarded as inappropriate in the Green Belt, other than in the case of specific exceptions.
20. Policies DP10 and DP13 of the Tandridge Local Plan³ (LP) reflect the advice of the Framework. They explain that unless very special circumstances can be clearly demonstrated, the construction of new buildings in the Green Belt will be regarded as inappropriate development and that planning permission will normally be refused for any such inappropriate development.
21. The list of exceptions to inappropriate development provided at paragraph 149 of the Framework includes limited infilling or the partial or complete redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development. The walls are a minor form of development and do not infill or redevelop the land. They are not therefore capable of benefitting from the exception to inappropriate development provided at paragraph 149(g) of the Framework.
22. As new buildings within the Green Belt, the walls constitute inappropriate development.

Openness

23. Barrow Green Road is a rural road winding through small pockets of woodland and open fields. From the road, much of the appeal site appears to comprise woodland, while hedgerows and low-level fencing on the opposite side of the road enclose paddocks. The walls cut across, and are slightly taller than, the

³ Part 2: Detailed Policies 2014 – 2029 (2014)

raised earth banks either side of the entrance to the appeal site. The walls are experienced as intrusive features on a largely undeveloped country road.

24. Paragraph 137 of the Framework states: 'the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence'. Paragraph 138 identifies five purposes Green Belts serve, including, amongst other things, to assist in safeguarding the countryside from encroachment. Openness is therefore an essential characteristic of the Green Belt, which has spatial and visual aspects.
25. The walls formalise the appeal site's access between the planted raised earth banks and create a conspicuous built feature in the rural, open setting. They therefore reduce the openness of the Green Belt in a spatial and visual sense. They are modest in size and experienced alongside the tall and slim profiled steel palisade fencing. I have also been referred to other fencing a short distance north along Barrow Green Road at Oxted Sand Pit, which the Council has confirmed as lawful. In the context of these other tall forms of boundary treatment, amongst heavy planting, the level of harm caused to the openness of the Green Belt by the walls is very low.

Character and Appearance

26. As set out above, the walls are located in a countryside setting. The character and appearance of the area is distinctly rural and heavily influenced by the natural environment, including thick woodland, hedgerows and open fields. However, the steel palisade fencing and gate behind the walls also influence the character and appearance of this part of the appeal site. The walls, fencing and gate create a utilitarian feature in this countryside setting, seen in short distance views from the road and the public footpath on the opposite side of the road, which runs to the west. They have the effect of urbanising this rural part of Barrow Green Road and relate poorly to the surrounding area.
27. The steel palisade fencing and gate are to remain at a maximum height of 2 metres and the walls are seen against this backdrop of harsh industrial features. This significantly reduces the level of harm the walls cause to the character and appearance of the area. The exposed grey breezeblock finish of the walls has a harmful impact on the verdant rural character and appearance of the area, but considered alongside the steel fencing and gate, the level of harm caused is very low. They do not harm the wider landscape character, considering the restricted views within which they can be seen next to the highway, fencing and gate.
28. Although the level of harm caused to the character and appearance of the area by the walls is very low, they conflict with Policies CSP18 and CSP21 of the Tandridge District Core Strategy (2008) (CS) and Policies DP7 and DP9 of the LP. These require, amongst other things, development to be of a high standard of design that must reflect and respect the character, setting and local context, with countryside being protected for its own sake. Policy DP9 refers specifically to walls and states incongruous features in rural areas are unlikely to be permitted, amongst other things.

Other Considerations and Planning Balance

29. It is claimed that the walls were erected for the purposes of improving highway safety and increasing the security of the appeal site, which is used for the stationing of shipping containers used for storage. However, there is limited information to explain how the walls achieve such improvements. It has not been explained how vehicles would not be able to pull-off of the road in the case that the walls were removed or lowered to no more than 1 metre in height in accordance with the notice. It has also not been explained how the walls are sufficient to prevent further acts of vandalism within the appeal site, especially when their positioning would suggest they could ease access over the steel palisade fencing for any trespassers. In the absence of sufficient explanations as to how the walls improve highway safety or increase security at the appeal site, I am unable to assign any significant weight to these claimed benefits.
30. The notice provides the appellant with the opportunity to reduce the height of the walls to 1 metre or less above the adjacent ground level. Where that requirement is complied with in that manner, the lowered, unfinished walls would be seen directly alongside the steel palisade fencing and gate. It is part of the appellant's case that when lowered in compliance with the notice, there would be no difference compared to the current impact of the walls on the openness of the Green Belt.
31. There would be no material difference between the impact of the walls in their current state on the openness of the Green Belt and that of the walls taken down to the lowered height specified in the notice. This is because of the modest overall size of the walls and the context within which they are experienced as set out above. The very low level of harm that the walls cause to the openness of the Green Belt would not therefore be remedied by the notice.
32. The level of harm the walls cause to the character and appearance of the area would be slightly reduced if they were to be lowered in height in accordance with the notice. Overall, the difference in impact would be very small because the walls lead into the appeal site, away from the road and are experienced in the context of the tall steel palisade fencing and gate, which would be more clearly visible from outside the appeal site. Therefore, in the case that the walls are lowered in height in accordance with the notice, there would only be a negligible change in the overall impact of the walls on the character and appearance of the area.
33. The appellant has requested that planning permission is granted for the walls subject to a landscaping condition, which could require the approval of a landscaping plan, to overcome concerns relating to landscape and visual amenity. No details have been provided as to what such a landscaping plan could comprise, and I do not see how it would be possible to safely introduce any meaningful or effective planting in front of the walls in the area currently covered by concrete. Planting could possibly be provided behind the walls, but this would not significantly improve the character or appearance of the area, as the walls would remain clearly visible from the road and public footpath. I am therefore unconvinced that such a condition would provide any benefit.
34. The Council has suggested, in the case that planning permission is granted, that a planning condition could require the walls to be rendered and painted dark green to reduce their visual impact. Such a condition would provide an

opportunity to significantly improve the appearance of the walls in comparison to them being lowered in accordance with the notice.

35. In summary, the walls constitute inappropriate development in the Green Belt. This would remain the case if they were to be lowered in height in accordance with the notice. The very low level of harm which the walls cause to the openness of the Green Belt would remain in the case that the walls are lowered in height in accordance with the notice. The nature of the harm which the walls cause to the character and appearance of the area would change slightly in the case that the walls are lowered in height in accordance with the notice, but the overall level of harm in this regard could be reduced through the imposition of a condition relating to their finish. The notice does not therefore remedy the harm that the walls cause to the Green Belt on account of their inappropriateness and their impact on its openness. Neither does it remedy the harm the walls cause to the character and appearance of the area.
36. Taking the above into account, I cannot attach any weight to the identified harm which the walls cause, as equal levels of harm would remain if the walls were lowered in height in accordance with the notice. Granting planning permission for the walls subject to a condition relating to their finish, as set out above, would provide a better outcome in terms of the impact of the walls on the character and appearance of the area. These other considerations clearly outweigh the harm identified and therefore comprise the very special circumstances needed to justify planning permission being granted for the walls.
37. Therefore, considering the requirements of the notice, the walls are not in conflict with Policies DP10 and DP13 of the LP, the requirements of which are set out above. Although I have found that the walls are in conflict with Policies CSP18 and CSP21 of the CS and Policies DP7 and DP9 of the LP, the requirements of the notice comprise material considerations which indicate my decision should be made other than in accordance with the development plan in this regard.

Conditions

38. It would be reasonable and necessary to attach a condition requiring the finish of the walls to be approved and completed. As the development has already been carried out, timescales would need to be specified for the approval and completion of those works. Failure to comply with those timescales would require the complete demolition of the walls. The Council and the appellant were invited to comment on the proposed wording of the condition, which resulted in further details and alternative wording for the condition being put forward by the appellant. The Council were invited to comment on those submissions, but no comments were received.
39. The appellant's proposed use of a dark beige render to finish the walls would not align with the Council's suggestion that a render and dark green paint finish would be more appropriate than the exposed brickwork. A dark beige finish would appear more urban than other colours, such as dark green, and would not be sympathetic to the rural setting. A coloured render or a render and paint combination could achieve the appropriate finish, which would need to be agreed between the main parties. The appellant's proposed dark beige finish to the walls would not sufficiently improve their appearance, and as such I shall

attach a condition requiring details of the finish to be approved and implemented within specific timescales.

Conclusion on Ground (a) and the deemed planning application

40. The appeal succeeds and planning permission is granted for the walls subject to the condition set out in the formal decision below.

Ground (f)

41. The appeal on ground (f) does not fail to be considered in respect of the walls because I have concluded that planning permission should be granted for that development in the ground (a) appeal. As an appeal has been lodged under ground (f), it falls for me to consider this in respect of the gate. The appellant has not made any submissions to substantiate this ground of appeal in respect of the gate.

42. The notice requires the gate to be removed or its height to be reduced to 2 metres or less above the adjacent ground level. These steps would be necessary to remedy the breach of planning control.

43. The appeal on ground (f) must therefore fail.

Overall Conclusion

44. For the reasons given above, I conclude that the appeals on grounds (c) and (f) fail and the appeal on ground (a) should succeed in respect of the walls. I will grant planning permission for the walls, but otherwise I will uphold the notice with corrections and variations. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the Act.

Formal Decision

45. It is directed that the enforcement notice is corrected by: (a) the deletion of the word 'wall' at Section 5 and its substitution with the word 'walls'; and (b) the deletion of the word 'it' at Section 5 and its substitution with the words 'the walls'.

46. It is directed that the enforcement notice is varied by the deletion of the words 'and unused materials' and 'to an authorised place of disposal' at Section 5.

47. The appeals on grounds (c) and (f) are dismissed. Subject to the corrections and variations, the appeal on ground (a) is allowed insofar as it relates to the erection of walls over 1 metre in height 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 erection of walls over 1 metre in height on land adjacent to a highway used by vehicular traffic in the approximate position marked with a blue hatch on the plan attached to the notice at Land at School Plantation, Barrow Green Road, Oxted RH8 9NE as shown on the plan attached to the notice and subject to the following condition:

- The walls hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

(i) Within 2 months of the date of this decision a scheme for the finishing of the walls (including the application of render of a specific colour, or render and paint of a specific colour) 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 4 months of the date of this decision the local planning authority refuse to approve the 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.

(v) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

(vi) 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.

48. Otherwise, the enforcement notice is upheld as corrected and varied insofar as it relates to the erection of a gate over 2 metres in height in the approximate position marked with a blue hatch on the plan attached to the notice at Land at School Plantation, Barrow Green Road, Oxted RH8 9NE as shown on the plan attached to the notice on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

L Douglas

INSPECTOR