



Appeal Decision

Site visit made on 27 October 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal Ref: APP/A4520/C/22/3298122

Henry Studdy House, 139 Bede Burn Road, Jarrow NE32 5AZ

- 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 Ian Twizell against an enforcement notice issued by South Tyneside Metropolitan Borough Council.
 - The enforcement notice is dated 23 March 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection on the land of: 1) Timber fencing, brick pillars and brick wall, all on top of the existing brick front boundary wall alongside Bede Burn Road and Field Terrace approximately shown with a red dashed line on the plan attached and marked 'Plan 2' (hereinafter 'Plan 2'); and 2) A pair of high timber gates supported by brick pillars on the front boundary alongside Field Terrace in the location approximately shown with three red crosses on Plan 2.
 - The requirements of the notice are: 1) Remove all timber fencing along the front boundary of the land with Bede Burn Rd and Field Terrace, as shown with a dashed red line on Plan 2. 2) Reduce the height of the brick pillars and brick wall to a height of eight brick courses from the adjacent footway along the full length of a front boundary with Bede Burn Road and Field Terrace as shown with a dashed red line on Plan 2, excluding 72cm of brick wall length marked as 'A' from the common boundary with 137 Bede Burn Road and 46cm of brick wall length marked as 'B' from the common boundary with 1 Field Terrace; and 3) Remove the gates in the location approximately shown with a red cross on Plan 2 and reduce the height of the supporting brick pillars marked with two red crosses on Plan 2, to a height of eight brick courses from the adjacent footway.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

2. The appeal is proceeding on grounds (b), (c), and (d), which are legal grounds, and on ground (f), which relates to matters of mitigation. As there is no ground (a), which is that planning permission should be granted for the alleged development, the planning merits of the case cannot be considered. For example, I cannot take into account the appellant's photographs of other fences and walls in the vicinity of the appeal site, as these do not relate to the grounds pleaded.
3. On the legal grounds (b), (c) and (d), the onus is on the appellant to make out their case to the standard of the balance of probabilities.

Background

4. A previous planning application, ref: ST/0660/18/HFUL, sought permission to increase the height of the southern and western boundaries at No 139 by adding close boarded fencing on top of the existing boundary wall, supported by new brick pillars. In addition, permission was sought for new timber gates and brick piers. The application was refused, and was consequently dismissed at appeal, ref: APP/A4520/W/18/3218120.

The appeal on ground (b)

5. Ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
6. There appears to be no dispute between the main parties that the development attacked by the notice has occurred. Although I will return to the timescale in question under ground (d), the appellant explains the circumstances in which the work was done, and provides photographic evidence of it within his statement. On the basis of the appellant's own evidence, there can be little doubt that the matters alleged in the enforcement notice have occurred as a matter of fact.
7. The appeal on ground (b) therefore fails.

The appeal on ground (c)

8. Ground (c) is that there has not been a breach of planning control.
9. The appellant argues that the wall was simply repaired, and so planning permission was not required. He explains that a tree overhanging a bus stop had to be removed from the property. He was concerned that the stability of the wall had been affected by the removal of the tree, to the point where it posed a danger to the public. As a result, he was obliged to repair and rebuild the boundary wall which extends to the adjoining property at 137 Bede Burn Road.
10. He refers to a structural report which said that the tree could be removed and the wall rebuilt using reclaimed bricks of a similar age to the property. He contends that the 15m stretch of the higher wall was a replacement for a previous wall of the same height, with the same result that planning permission was not required.
11. With reference to the report from Olivers Tree Services, the appellant states that the original 1.7m wall can clearly be seen in photographs. In the tree report dated 17 December 2015, the first photograph shows the ash tree T1 next to the side of the house, with the area around the base of the tree surrounded by foliage.
12. On the next page, the photograph of the sycamore tree T2 has a stretch of red brick wall to the right. However, it is not possible to be certain of the height of the wall from this image. There is foliage behind and to the left of the tree, and the area just behind it is dark, and so I am not able to make out the extent of the wall. The photograph of sycamore tree T3, however, clearly shows that the wall is quite low with hedging behind as it turns the corner at the junction.
13. The last photograph shows the side of the house with one tree removed and a second appearing to have been cut back. The image is dark, but there does

appear to be a higher section of wall close to the external chimney of No 139. However, there is no evidence that this section of wall was 15m in length. The lower wall at the corner is again evident, but between these two points it is difficult to make out if a wall is present or not.

14. As stated above, it is for the appellant to produce sufficient evidence to demonstrate that planning permission is not required for the alleged works. It is clear from the historic black and white photograph that No 139 did once have higher boundary walls. However, there is little to show that this was the situation immediately prior to the unauthorised works being undertaken. Whilst remedial works were no doubt needed to some part of the wall that existed when the tree work was done, there is no corroborative evidence to show that a 15m stretch of wall of 1.7m in height was simply repaired or replaced.
15. In the absence of any substantive evidence to show that the development described in the notice did not need planning permission, I conclude that the appeal on ground (c) must fail.

The appeal on ground (d)

16. Ground (d) is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. Again, the burden of proof falls on the appellant under this ground.
17. For operational works, the time period for enforcement action is four years from the substantial completion of the development. The enforcement notice is dated 23 March 2022, and so all the alleged works need to have been substantially complete on or before 23 March 2018 to be immune from enforcement action.
18. The appellant states that the work including the entrance pillars either side of the gates, and the smaller fence supports which are located around the remaining wall, were completed on 9 November 2016. The gates were then installed on 11 November 2016, and finally, the solid timber infills were installed. He confirms that the operational works for the boundary treatment at No 139 were carried out by AVT – Building Services.
19. The appellant maintains that the operational works for the boundary treatments were completed in November 2016, which would be outside the four year period. However, he does not provide any quotation or invoice from AVT – Building Services that would help to corroborate these dates.
20. He has provided a number of photographs but, although he says that their date stamps, times and locations are present, this information is not apparent in the documents submitted with the appeal. He also refers to witness statements which he says confirm the works had been fully completed more than four years before the date of the notice. However, these statements are not before me and so I cannot take them into consideration.
21. I have taken into account the representation of support from Mr and Mrs Dixon. Their comments focus on the planning merits of the development, including its height and appearance, and matters relating to littering and security. As explained above, such matters cannot be considered under the legal and mitigation grounds that the appeal is proceeding on.

22. I note a reference from the Dixons to the fact that they have lived at 1 Field Terrace since before the appellant acquired No 139, and remember the low walls and hedges of the property. However, there is nothing in the representation that helps to pinpoint the date by which the unauthorised development was finished.
23. I therefore conclude that the appeal under ground (d) is not supported by sufficient evidence from the appellant to demonstrate that, on the balance of probability, the development was substantially complete more than four years prior to the date of the notice. It follows that, at the time the enforcement notice was issued, it was not too late for the Council to take enforcement action against the matters alleged.
24. As a result, the appeal under ground (d) must fail.

The appeal on ground (f)

25. Ground (f) is that the steps required to comply with the requirements of the notice are excessive.
26. The appellant offers no evidence as to why he considers the requirements to be excessive, and he has not suggested any lesser steps with a view to overcoming the Council's objections.
27. The notice is clearly directed at remedying the breach of planning control. In the absence of an acceptable alternative, I find that the requirements of the notice are commensurate with its aims, and are not excessive.
28. The appeal on ground (f) fails.

Conclusion

29. The appeal is dismissed, and the enforcement notice is upheld.

Elaine Gray