



Appeal Decision

Site visit made on 28 November 2022

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2023

Appeal Ref: APP/C4235/C/22/3302375

86A Higher Bents Lane, Bredbury, Stockport SK6 2JP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Krista Procter against an enforcement notice issued by Stockport Metropolitan Borough Council.
 - The notice was issued on 7 June 2022.
 - The breach of planning control as alleged in the notice is Without the benefit of planning permission, the construction of a 1.8 metre high electric sliding gate across the vehicle access to the Land from Higher Bents Lane (the "Gate").
 - The requirements of the notice are to: Remove the Gate from the Land, the frame used to open the Gate and all machinery including the electric motor fitted to facilitate the operation of the Gate.
 - The period for compliance with the requirement is: three (3) 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. 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 construction of a 1.8 metre high electric sliding gate across the vehicle access to the Land from Higher Bents Lane at 86A Higher Bents Lane, Bredbury, Stockport SK6 2JP.

Ground (a)/the deemed application for planning permission

2. The main issue is the effect of the development on highway safety having regard to the fallback position of installing a gate utilising permitted development provisions.
3. In refusing a previous planning application¹ to retain the gate subject to the appeal, the Council determined that it has a harmful effect on highway safety and consequently that it fails to accord with Policies T-3 and SIE-1 of the Core Strategy 2011. This view was endorsed by the Inspector who dismissed a subsequent appeal² in May 2021.
4. In terms of the impact upon highway safety, as the footpath is narrow at this location it is likely that cars would wait fully on the public highway whilst the gate opened, meaning that there would be an obstruction to the flow of traffic along Higher Bents Lane whilst the opening took place. However, irrespective

¹ DC/077970

² APP/C4235/W/21/3268799

of whether there is a gate or not, vehicles would have to slow down before turning into the appeal site and those travelling southwards would have to wait to turn across oncoming traffic. Those factors in themselves would impact on the flow of other vehicles. Due to the size and layout of the driveway at the appeal property and the absence of on-road parking restrictions, it does not appear likely that delivery vehicles would in any instance seek to drive onto the site but would instead park on Higher Bents Road. Therefore, whilst I concur that there is some impact upon highway safety from the appeal development, in the specific circumstances of the case this is limited when compared to the baseline without a gate at all.

5. Nonetheless, the appellant does not seek to dispute the previous findings of the Council or the Inspector with respect to the impact that arises upon highway safety, or to suggest that there is not a conflict with the development plan. Instead, they point to a lawful development certificate³ that has been granted relating to a gate of one metre in height that could be erected in the same location as the appeal development as permitted development under The Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO). This would have the same impact on the public highway because vehicles entering the appeal site would also have to wait on the highway whilst it opened.
6. In order to establish whether a fallback position is a material consideration, the courts have set out there should be a greater than a theoretical possibility that the alternative development might take place, or in other terms a real prospect of the fallback being implemented. In that respect, the reasons given by the appellant for installing the current gate are to provide security and privacy. The fallback gate at one metre in height would be substantially lower than the existing gate. Therefore, its benefits in providing privacy would be negligible in comparison to that which has been erected because vision would be possible over it and towards the dwelling. It would also be easier for a person to climb over than the higher gate and accordingly would provide lesser security in that regard.
7. However, the lower gate would still prevent vehicles from leaving and entering the appeal site when closed and make it more difficult for people on foot to do so. It would as a result provide a significant security benefit to the appellant. This would mean that the lower gate would still be an attractive proposition from a security perspective, and I am satisfied for that reason that there is a real prospect that the appellant would choose to install it if this appeal is not successful. This would lead to the same impact on highway safety as the appeal development.
8. I am also mindful that the GDPO does not restrict the installation of gates *per se* at a dwelling on a classified road and does not require the impact of their installation on highway safety to be considered providing that they meet the relevant tolerances set out and do not affect visibility. It is not the height above the GDPO tolerance or visibility concerns that give rise to the highway safety impact in this instance but the presence of the gate as a physical barrier. This consideration also carries weight in favour of the retention of the appeal development.

³ DC/081909

9. On the basis of the above considerations the fallback position carries significant weight in support of the development, in particular as there is a real prospect that it would be implemented and it would have the same impact on highway safety as the appeal development does. The provisions of the GDPO with regard to gates also offers weight in support. In the context of the limited degree of harm that I have found arises to highway safety as a result of the presence of a gate, these considerations justify the permitting of a development that fails to accord with the relevant policies of the development plan. Therefore, the appeal on ground (a) succeeds.

Ground (f)

10. An appeal has been made under ground (f) as the appellant is of the view that the requirements of the notice are excessive. However, as the appeal succeeds under ground (a) planning permission will be granted for the development and the enforcement notice quashed. This means that there is no need to consider ground (f) further.

Conditions

11. The Council does not suggest that any conditions should be imposed. Given that the development is already installed and is of an acceptable appearance, I also do not consider it necessary to impose any.

Conclusion

12. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for a 1.8 metre high electric sliding gate across the vehicle access to the Land from Higher Bents Lane as described in the notice.
13. The appeal on ground (f) does not therefore fall to be considered.

Graham Wraight

INSPECTOR