



Appeal Decisions

Site visit made on 14 February 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

Appeal A Ref: APP/C4615/C/22/3302888

Appeal B Ref: APP/C4615/C/22/3302889

472 Birmingham New Road, Dudley WV14 9QF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Davinder Singh and Appeal B is made by Jagjit Kaur against an enforcement notice issued by Dudley Metropolitan Borough Council.
- The notice was issued on 6 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a means of enclosure adjacent to the highway comprising of a timber fencing, gravel boards and concrete posts.
- The requirements of the notice are to
 - i) Take down and remove from the Land, the means of enclosure comprising concrete gravel boards, concrete posts and fencing positioned adjacent to the highway of Harvington Road
 - ii) To lawfully remove any debris or other waste from the Land arising from works carried out in compliance with step i) above.
- The period for compliance with the requirements is one month.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) of the Town and Country Planning Act 1990 as amended. Since Appeal A has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal B is proceeding on ground (f) only as the prescribed fee has not been paid on ground (a) and the application for planning permission deemed to have been made under Section 177(5) of the Act has lapsed.

Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

Appeal A – the appeal under ground (a) and the Deemed Planning Application

Main Issues

2. The main issues are (i) the effect of the development on the character and appearance of the surrounding area and (ii) highway safety.

Reasons

Character and Appearance

3. The appeal dwelling is in a residential area in a short row of similar two storey detached dwellings on Birmingham New Road. There is a stretch of verge rather than built development opposite these dwellings. The appeal site is on the corner of the junction of Birmingham New Road and Harvington Road. Dwellings on both roads in the vicinity of the appeal dwelling largely have open

frontages without fences and walls which together with the verge opposite the appeal dwelling results in an open and spacious character.

4. The development consists of a single boundary enclosure made up of timber fence panels with semi- circle tops as well as concrete gravel boards and concrete posts. The development extends along the length of the appeal site at the side on Harvington Road and there are shorter lengths of fencing both at the front and rear of the appeal site. The previous boundary treatment did not extend to the same degree into the verge alongside Harvington Road. In increasing the garden area by erecting the new fencing in a different location, the amount of open verge has been significantly reduced. The appellant states that the height of the fencing is in excess of 2 metres which together with the extent of the development results in an overly dominant feature in a prominent corner location.
5. I note that the appellant was unaware that planning permission was required for the development. However, the development is unauthorised and does not benefit from permitted development rights. The nature and location of any future boundary treatment and whether planning permission is required for any alternative is a matter for discussion between the parties.
6. The appellant has referred to other properties in the street having the same fences as the development. No further details are provided and I did not observe any other similar boundary treatments along this section of Birmingham New Road on my site visit. There are fences at the other end of Harvington Road at the junction with Breen Rydding Road but they are not comparable to the development in terms of the extent of development or location. The Council indicates that any fences that do exist are likely to be immune from enforcement action. It remains the case that each proposal has to be assessed on its own particular location and circumstances.
7. The development results in a visually intrusive feature which is out of scale with the prevailing pattern of front curtilage boundary treatments in the surrounding area. For those reasons, the development does harm the character and appearance of the area.

Alternative Development

8. The appellant has asked under ground (f) to retain a fence of up to 2 metres in height. However, as that request involves a consideration of planning merits, it needs to be addressed under ground (a). Whilst the appellant wishes to retain a fence of up to 2 metres in this location for privacy reasons, it is not clear why the development had to extend into the verge in order to achieve privacy. Retaining a fence of 2 metres does not, in my view, overcome the harm that I have found when the design, location and appearance of the fencing would remain largely the same.
9. For the reasons given, the development does harm the character and appearance of the area. It is therefore contrary to Policies ENV2 and ENV3 of the Black Country Core Strategy (2011) and Policy S8 of the Dudley Borough Development Strategy (2017)(the Dudley Strategy) which, amongst other things, collectively refer to all development preserving and enhancing local character. It is also in conflict with Policies L1 of the Dudley Strategy which refers to development being appropriate in its locality and S6 of the Dudley Strategy which refers to supporting development which is responsive to the

character of the local area. I also consider that reducing the fence to no more than 2 metres would also harm the character and appearance of the area for the same policy reasons.

Highway Safety

10. The three fence panels erected to enclose the rear of the appeal site form the side boundary with the drive of No 1 Harvington Road. The reduced amount of verge to Harvington Road and the height of the side fence panel closest to the road are in my view factors that are likely to restrict visibility for occupiers of No 1 particularly when exiting the drive onto the pavement.
11. I do therefore find that the development does have an adverse impact on highway safety. This is in conflict with Policy S17 of the Dudley Strategy which, amongst other things, refers to development making adequate and safe provision for access and egress by vehicle users, cyclists, pedestrians and other road users.
12. Although the Council has referred to Parking Standards Supplementary Planning Document (2017) and Policy TRAN2 of the Black Country Core Strategy, I have not been directed to which provisions of those documents, the Council considers to be relevant to the development. I have therefore not relied upon them in reaching my decision. The appeal on ground (a) therefore fails.

Appeals A and B - the appeal under ground (f)

13. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The requirement of the notice is to remove the fence and the purpose of the notice is therefore to remedy the breach.
14. However, the appellants' request to retain a fence of up to 2 metres under ground (f) has been already considered under ground (a). As the purpose of the notice is to remedy the breach, the requirement to remove the fence is not excessive. The appeal under ground (f) fails.

Conclusion

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

E Griffin

INSPECTOR