



Appeal Decision

Site visit made on 14 February 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 22 March 2023

Appeal Ref: APP/C4615/C/22/3302046

138 Ham Lane, Pedmore, Stourbridge, DY9 0UD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mark Hanson against an enforcement notice issued by Dudley Metropolitan Borough Council.
- The notice was issued on 27 May 2022.
- The breach of planning control as alleged in the notice is without planning permission, and within the last four years, the erection of a common boundary fence within 2m of the adjacent highway exceeding 1m in height, and the erection of a wall with pillars and railings to the front of the Land exceeding 1m in height.
- The requirements of the notice are
 - i) Reduce the height of the two fence panels closest to Ham Lane (illustrated in image 1) to a maximum height of 1m.
 - ii) Permanently remove the brick pillars and railings to the front of the Land.
 - iii) Remove from the Land in a lawful manner all waste materials and debris arising from fulfilling the requirements of this notice.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Decision

1. It is directed that the enforcement notice is varied by deleting requirement ii) of Section 5 of the notice and replacing it with "remove the railings to the front and reduce the height of the two brick pillars to the same height as the remaining wall."
2. 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.

Procedural Matter

3. The Council omitted to send a copy of image 1 which is referred to in the notice when issuing the notice. However, as there are six fence panels which are clearly identifiable as separate panels, I do consider that the requirement to reduce in height the two panels closest to Ham Lane is sufficiently clear without the image in the event of the notice being upheld.

The Notice

4. The allegation contains superfluous wording. However, the appellant was given an opportunity to comment specifically upon the wording of the notice and chose not to and there is no evidence before me that he did not understand the notice in its current form. I have disregarded the reference to 2 metres of the

adjacent highway in the allegation as I have no information as to why that was included.

5. The requirement relating to the pillars is imprecise and the Council subsequently confirmed that it is asking for the pillars to be reduced to the height of the remaining wall rather than removed. I will amend the requirement to "remove the railings to the front and reduce the height of the two brick pillars to the same height as the remaining wall."
6. The requirements do not match the allegation which results in under-enforcement. Choosing to under enforce has implications under Section 173 (11) of the Act, which states '*where an enforcement notice could have required any buildings or works to be removed but does not do so; and all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of s73A in respect of development consisting of the construction of the buildings or works*'.
7. When under-enforcement was raised with the Council, it stated that permitted development rights will apply once the notice is complied with. Whilst permitted development rights cannot be applied retrospectively, the Council stated that it did not wish to withdraw the notice or alter the existing wording so Section 173(11) remains relevant.

Main Issues

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

Reasons

Character and Appearance

9. Dwellings in the immediate vicinity of the appeal site are a mix of detached and semi-detached properties of varying styles. Dwellings to this side of the road have largely retained open frontages and low boundary walls to the pavement including the properties either side of the appeal site.
10. The appeal site itself comprises a semi-detached two storey dwelling located on Ham Lane. To the front, there is vehicular access and a generous frontage which is made up of hardstanding for parking. There is a wooden fence which divides the frontages of the appeal site and the adjoining semi-detached property at No 136. The fence has a traditional appearance and is staggered which means that it has three different heights with the lowest height being closest to the pavement.
11. Prior to the development taking place, the front boundary of the appeal dwelling was made up of a low wall with leylandii trees behind it. The appellant subsequently removed the leylandii trees as they were causing damage to the original wall and erected a new wall with an inset of black railings and pillars at either end. He also erected a new side fence which is described as a cedar screen next to the existing wooden fence owned by No 136.
12. Boundary treatments between properties where they exist, particularly at this side of the road tend to be made up of hedges. The existing arrangement with the two separate boundary fences for the appeal site and No 136 almost back-

to-back is unusual. The appearance of the back of the fence is different to the front and resembles a series of black boards with parts of it visible particularly above the staggered element of the fence panels of No 136. Viewed from the other side, the appeal fence is a solid block of six cedar panels of just under 2 metres in height.

13. The appellant states that he erected it due to the appearance and lack of maintenance of the neighbouring fence. However, I have no details of what other options were considered by the appellant such as having a new single fence between the two properties or why the appeal fence with its height and design and appearance was chosen.
14. The occupier of No 136 has an issue with the height of the appeal fence which is at a constant height whilst her fence is staggered with the two panels closest to the pavement being 3 feet and 4 feet which she "understands to be the law". I do not have any information as to how that fence was assessed as it is not referred to in the Council's evidence. However, the Council's requirement in the event of the notice being upheld is for the two fence panels closest to the pavement to be reduced to 1 metre.
15. The height, location and relationship with the existing fence means that the appeal fence is incongruous and out of keeping with the surrounding area. The expanse of hardstanding at the frontages of both the appeal site and No 140 emphasises the visual dominance of the appeal fence.
16. At the front, the Council has no issue with the wall itself subject to adjustments to the wall to reduce the size of the pillars. The railings and pillars contrast with the low walls and soft landscaping of properties to this side of the road. The pillars and the railings are visually dominant in comparison to the prevailing boundary treatments along this side of the road. As the extensive frontage to the appeal dwelling is now made up of grey paving blocks, that background adds to the harsh appearance of the wall with the black railings and pillars.
17. The appellant replaced the front garden wall due to damage caused to the original boundary wall by leylandii trees. Nevertheless, no details are provided as to why pillars and railings were necessary at the front as opposed to just removing the trees that were causing damage.
18. Photographs have been provided by the appellant to support his view that there a variety of boundary treatments in the surrounding area. However, a number of the photographs show traditional low walls with mature hedging. Whilst the trees that were removed from the appeal site may have been over five metres tall, soft landscaping is not comparable to railings and pillars in terms of visual appearance.
19. There are some examples provided of fences and gates although the Council indicates that some of the developments to the other side of the road may benefit from permitted development rights and do not therefore require express planning permission. I do not have details of which developments have been granted planning permission or in what circumstances permission was considered to be appropriate. In any event, it remains the case that each proposal has to be considered on its own particular merits and location and the prevailing pattern of development is of traditional low walls in the vicinity of the appeal site.

20. The occupier of No 136 has indicated that she has no issue with the front boundary treatment just the height of the fence to the side. However, the lack of objections to the front boundary treatment does not alter my findings.
21. The boundary treatments to the front and side are not of a scale and design which is appropriate to the locality. I therefore do find that the development does harm the character and appearance of the area. It is contrary to Policies ENV2 and ENV3 of the Black Country Core Strategy (2011)(BCCS) and Policy L1 of Dudley Borough Development Strategy (2017)(DBDS) which collectively refer to protecting local character. I have not been provided with any details as to why the Planning Guidance Note 17 – House Extension Design Guide is relevant to the appeal. Policy S6 of the DBDS is less relevant than other policies referred to as it is an overarching policy which refers to Urban Design principles.

Highway Safety

22. The Council alleges that the brick pillars materially obstruct visibility for drivers, pedestrians and cyclists. The Council's evidence which relies upon the planning application report refers to the pillars hindering vehicle access and egress from the appeal site. The pillar which is furthest from the vehicular access does not cause any visibility issues. Whilst the other pillar at the entrance to the vehicular access is taller than the wall, it is not particularly wide and the access itself is generous.
23. Given the location and nature of the pillars and the vehicular access, I do not consider that the visibility of pedestrians and cyclist or drivers is materially obstructed by the pillars or that they adversely impact highway safety. The development is therefore not in conflict with Paragraph 110 of the Framework which requires safe access to the site for all users. It is also not contrary to Policy L1 of the DBDS which refers to development not having a detrimental impact on highway safety or Policy S17 of the BCCS which refers to safe provision for access. Policy ENV3 of the BCCS and Policy S6 of the DBDS focus upon design matters rather than highway safety.

Other matters

24. Whilst the appellant has made comments about the Council's handling of the case, such matters are for the appellant to resolve with the Council as they do not fall within the remit of this appeal.

Conclusion

25. Although I have found that the pillars do not adversely effect highway safety, I have found that the development does result in harm to the character and appearance of the area. The appeal on ground (a) therefore fails.
26. 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.

E Griffin

INSPECTOR