
Appeal Decisions

Site visit made on 1 March 2023

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 05 April 2023

Appeal A Ref: APP/W1905/C/22/3291642

45 Barrow Lane, Cheshunt, WALTHAM CROSS, EN7 5LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jermaine Smart against an enforcement notice issued by Broxbourne Borough Council.
 - The notice, numbered ENF/21/0009, was issued on 6 January 2022.
 - The breach of planning control as alleged in the notice is the erection of a porch and front boundary wall over 2 metres in height.
 - The requirements of the notice are to: (i) Reduce the height of the front boundary wall, including pillar, so that it does not exceed 1 metre in height in accordance with the Town and Country Planning (General Permitted Development) Order 2015 Schedule 2, Part 2, Class A (ii) Remove the porch from the land in its entirety (iii) Remove any resultant debris from the land.
 - The periods for compliance with the requirements are: Step (i) 4 weeks; Step (ii) 8 weeks; and Step (iii) 12 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) 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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Appeal B Ref: APP/W1905/W/22/3291643

45 Barrow Lane, Cheshunt, Waltham Cross, Hertfordshire, EN7 5LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Jermaine Smart against the decision of Broxbourne Borough Council.
 - The application Ref 07/21/0617/HF, dated 10 February 2021, was refused by notice dated 6 December 2021.
 - The development proposed is a porch 3.25 square metres and boundary wall with piers.
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by the deletion of the words "over 2 metres in height" from paragraph 3, "The matters which appear to constitute the breach of planning control."
2. Subject to the correction, 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.

Appeal B

3. The appeal is dismissed.

Appeal A, ground (b)

4. An appeal under ground (b) is on the basis that the matters stated in the notice have not occurred. In this case the appellant says that part of the matters stated in the notice have not occurred because the wall and piers are not over 2 metres in height. This is correct as a matter of fact and not disputed by the Council.
5. Section 176(1)(a) permits the correction of any defect, error or misdescription in the notice, as long as doing so would not cause an injustice to the appellant or local planning authority. Removing the reference on the allegation to the 2 metre height would remedy the misdescription in the notice. The allegation would still describe the same development, i.e. the partly built wall and piers, and Requirement 5(i) of the notice does refer to the correct part of the Town and Country Planning (General Permitted Development) Order 2015 ('the GPDO') and requires the wall to be reduced to 1 metre. The notice was therefore clear as to what needed to be done to remedy the breach.
6. Overall, it was clear from the notice what the development alleged by the Council was and how it should be remedied. The appellant has also brought an appeal under ground (a) with a deemed application for permission for the development and has therefore not been prejudiced in that he did not appeal on all of the relevant grounds. I therefore find that no injustice would be caused by correcting the notice so that it no longer refers to the height of 2 metres and direct that the notice should be corrected in this way.
7. The appellant accepts that the pillars (described by him as piers) are over 1 metre in height (approximately 1.35 metres in total). The pillars are part of the overall wall structure, and therefore not permitted by Part 2, Class A of the GPDO which does not permit a wall or means of enclosure adjacent to a highway used by vehicular traffic (as is the case here) which exceeds 1 metre above ground level. An appeal on ground (c), that the matters alleged in the notice do not constitute a breach of planning control because the development benefitted from permitted development rights could not have succeeded. The appellant is therefore not prejudiced with regards to this potential ground of appeal either.
8. The appeal on ground (b) does not therefore succeed when considering the corrected notice.

Appeal A and Appeal B, ground (a) and the deemed application for permission

9. Appeal B is a retrospective appeal for the development as already built to be completed in accordance with the plans as submitted. The development sought in Appeal B includes the development alleged in the notice in Appeal A which seeks to enforce against the works as built. The main issue in both appeals is the effect of the development on the character and appearance of the area.
10. The host property is a dwellinghouse in a residential area. As the end house on a small terrace part of its side boundary is adjacent to a highway on which cars are often parked. The houses in the immediate vicinity have small front gardens which are mostly grassed and planted, with either low or no means of enclosure adjoining a shared paved footway.

11. The development is incomplete, but it is possible to see the proposed scale and mass of the boundary wall and porch in location and its effect on the host dwelling. The wall does not yet have the intended elements between the pillars but already appears obtrusive and overly large when seen in the context of the other houses in the vicinity, particularly those on the adjoining terrace. The red brick used in the wall and porch is very different in appearance to the variegated yellow and brown bricks used most commonly in the buildings in the immediate vicinity. This contrast contributes to the incongruity of the development in this setting, and the harm it causes. The porch is also overly large and made of very different materials when viewed next to the host property and other nearby houses (even with the staining of the walls).
12. The appellant referred to various other properties in the area which have garden boundaries of a similar height and design to that proposed, and which I have taken into account. However, each property has to be considered on its own merits and taking into account the particular characteristics of the host property and context of the location, and in this case the development causes unacceptable harm as set out above. I also give little weight to the fact that other developments in the area have been done without the benefit of planning permission, and it is not the case that the whole character of the area has changed as a result.
13. The evidence shows that the host property previously had a fence around the garden, and the appellant says that this was between 120 and 130cm in height, although it was only the vertical posts that were at this level and the majority of the fence height was significantly lower. The fence was very different in scale and mass to the wall which forms part of the development. This wall is much more substantial and appears bulky and incongruous in comparison and when considered in relation to the host property. I have taken account of the previous fence, and the appellant's wish to fully enclose the garden for the purposes of security and accord these considerations limited weight as the proposed design and materials used in the development are only one way to achieve this aim.
14. The appellant suggested that the development could be altered so that the size of the porch was reduced so that it fell within the size permitted by the GPDO, the wall altered and the materials, including the colour of the bricks on the host property could be altered or the walls rendered. However, there was no alternative scheme before me with sufficient detail to be able to consider this as an option, but it may be that such a detailed scheme could be the subject of a subsequent planning application.
15. The development causes harm to the character and appearance of the area and is in conflict with Policy DSC1 of the Broxbourne Local Plan 2018 – 2033 which, amongst other things, seeks to secure a high standard of design which enhances local character. As there are no other considerations of sufficient weight to overcome this harm the appeal on ground (a) fail and planning permission should not be granted in Appeal A or Appeal B.

Appeal A, ground (f)

16. An appeal on this ground is on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control constituted by the matters alleged in the notice, or as the case may be, to remedy any injury to amenity which has been caused by any such breach. The

purpose of the enforcement notice was in part to remedy the breach of planning control (by seeking the removal of the porch) and in part to remedy injury to amenity (by requiring the height of the wall to be reduced to less than 1 metre). As such the notice does not exceed what is necessary to achieve these aims. I have dealt previously with the appellant's suggestion that an alternative scheme would be appropriate, and it is not possible to properly assess such a scheme in the absence of full details.

17. The appeal on ground (f) does not therefore succeed.

Zoë Franks

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/W1905/C/22/3291642	Mr Jermaine Smart
Appeal B	APP/W1905/W/22/3291643	Mr Jermaine Smart