



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 May 2023

Appeal Ref: APP/R0660/X/22/3307271

Jahanara Bhavan, Brereton Heath Lane, Brereton Heath, Cheshire, CW12 4SZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Sir Anam U Islam against the decision of Cheshire East Council.
 - The application ref 22/2162C, dated 17 May 2022, was refused by notice dated 6 September 2022.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is new front garden wall.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a certificate of lawful development in relation to the proposed new front garden wall was well-founded.
3. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 ('the GPDO') permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure where certain specified conditions are met.
4. The appellant's case is that the original gateposts, which have been in place since before he acquired the house, are 2.35m in height. The railings which were installed by him subsequently were 1.92m in height. The new wall and fencing which replaced those railings (i.e. the development which is the subject of this appeal) is 1.7m in height and there are some additional new pillars which are 2.19m. The Council does not take issue with any of these measurements.
5. Condition (c) provides that development is not permitted under Schedule 2, Part 2, Class A where 'the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would as a result of the development, exceed its former height.'
6. On the appellant's evidence the railings which have been replaced were not part of the same operation as the gateposts which were constructed at an earlier date. The height of the gateposts is therefore not relevant when considering Condition (c) as the relevant operational development against which to compare the development in this LDC appeal is only the original

railings which were installed as a single operation by the appellant (and separate to the gateposts).

7. Taking the facts of the case into account, the new pillars form part of a single operation along with the new wall and fence structure. As the new pillars are taller in height than that of the replaced railings the development consisting of the new garden wall does not benefit from permitted development rights because it exceeds the height of the structure it was replacing and is taller than 1m adjacent to highway used by vehicular traffic. The development does not therefore meet the requirements of Schedule 2, Part 2, Class A of the GDPO. The planning status of the gateposts, as a separate operation, is not affected.

Conclusion

8. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the new front garden wall was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Zoë Frank

INSPECTOR