



Appeal Decision

Site visit made on 19 April 2023

by D Boffin BSc (Hons), DipTP, MRTPI, Dip Bldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 16th May 2023

Appeal Ref: APP/B3030/C/22/3310073

'Land' known as 1 Third Avenue, Edwinstowe NG21 9NU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal is made by Mrs Dawn Baker against an enforcement notice issued by Newark & Sherwood District Council.
- The notice was issued on 27 September 2022.
- The breach of planning control as alleged in the notice is:

Without planning permission, operational 'development' consisting of the erection of a fence enclosing the North and West elevations of the property (as shown within photographs 1 & 2 and highlighted red on the site location plan) and the erection of an outbuilding located forward of the principal elevation of the property (as shown within photograph 3 and highlighted green 'X' on the site location plan).
- The requirements of the notice are:
 - A. Reduce the height of the fence enclosing the North and West elevations of the property (as shown within photographs 1 & 2 and highlighted red on the site location plan) to no more than 1.4m in height.
 - B. Remove from the land the outbuilding located forward of the principal elevation of the property (as shown within photograph 3 and highlighted with a green X on the site location plan).
- The period for compliance with the requirements is: 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the 1990 Act. 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.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Procedural Matters

1. The appellant submitted her appeal initially as a householder planning appeal in error. After advice from the Planning Inspectorate the appeal was resubmitted as an enforcement notice appeal. The appellant submitted a copy of the Council's Delegated Enforcement Decision Record – Further Action Report (the Report) with the initial appeal. As that documentation was produced by the Council, I consider that there would be no injustice to either main party by that document being treated as part of the evidence before me in the current appeal. I have determined the appeal on that basis.
2. The Report refers to documentation that was submitted to the Council in respect of medical evidence relating to the health conditions of the appellant's dependants. That documentation is not before me, but the Report details the issues raised by the medical evidence. I consider that I do not need to refer to the detail of the health conditions cited in the Report. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 and to the evidence regarding the appellant's family circumstances

and the reasons for requiring the fencing. Such a duty does not necessarily override other considerations, but it is a factor to be weighed in the planning balance.

The ground (c) appeal

3. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is upon the appellant. For example, the appellant needs to show that development has not occurred for the purposes of section 55 of the 1990 Act, or that the matters alleged in the notice have been granted planning permission, or that they constitute 'permitted development'.
4. The appellant states that permission was given by '*Philip Haywood a NCHA inspector*'. It is clear that NCHA is Nottinghamshire Community Housing Association who own the property. Correspondence from NCHA indicates that in June 2021 permission was granted '*to erect 6ft fence to the side elevation however we are unable to grant permission for the 6ft fence to the front of the property the reason being the maximum height for fencing to the front elevation would be 4ft*'. However, that permission relates to their ownership of the property rather than planning permission. It is regrettable that the appellant was not advised by NCHA to contact the Council to enquire whether planning permission was required for the fence.
5. The appeal property is located at the junction of Second and Third Avenues and is an end of terrace. The fence that is the subject of the notice is approximately 2 metres tall and extends across the boundary of 1 Third Avenue's (No 1) garden with Second Avenue and around the corner extending part of the way along the boundary with Third Avenue. The remainder of the fence bounding the garden area and Third Avenue is appreciably lower in height and is not affected by the notice. Between the front elevation of No 1 and Third Avenue a timber outbuilding has been erected. That outbuilding is close to the property's boundary with Third Avenue.
6. I note that the Report indicates that as the fence, affected by the notice, exceeds 1 metre in height adjacent to a highway used by vehicular traffic it requires planning permission. That Report also states that the timber outbuilding '*appears to have been built forwards of the principal elevation and therefore also constitutes a breach of planning control*'. There is no evidence before me to contradict these findings and based on my observations I have no reason to dispute them. The operational development does not fall within permitted development rights. Therefore, express planning permission is required and there is no evidence that planning permission has been granted for the development as constructed.
7. I conclude that the matters alleged constitute a breach of planning control. There is no evidence that planning permission has been granted, therefore, the appeal on ground (c) must fail.

The ground (a) appeal and deemed planning application

Main Issue

8. The main issue is the effect of the development on the character and appearance of the surrounding area taking into account the appellant's personal circumstances.

Reasons

9. The appeal property is an end of terrace dwelling which lies on the corner of Third Avenue and Second Avenue. It is in a mainly residential area which has a distinct uniform grain formed by the regimented layout of the roads and plots that form this planned settlement. It is characterised by predominantly semi-detached and terraced traditional dwellings. The dwellings are set back from the road and have modest enclosed front gardens and driveways. The boundary treatments are varied, but the frontages of those gardens are generally composed of relatively low walls in brick or low fences, some have hedges above, or are wholly formed of hedging. There are some fences of a height of around 2 metres on return boundaries and there are outbuildings within some gardens. Nevertheless, the generally low walls and hedges to the frontages and landscaping within the gardens convey a sense of space and verdant character and appearance to the surrounding area. Moreover, any outbuildings are largely sited to the side or rear of the dwellings. As a result, they are generally set back from the road and they do not form prominent features in the street scene. These factors help to soften the uniform grain.
10. The Council's Householder Development Supplementary Planning Document (SPD) provides guidance on the erection of boundary treatments. It states, amongst other things, that *'The general principles to guide the choice of boundary treatment and where permission is required the aspects against which a proposal would be considered include: (i) Whether the scale, height and choice of material is in keeping with the character and appearance of the dwelling and surrounding area, and is not considered as too intrusive – particularly important where a treatment is proposed on a corner plot. (ii) Whether the proposed treatment would create an oppressive appearance. This is particularly important where a particular treatment is proposed for security reasons.'*
11. It also provides guidance on the erection of outbuildings and states, amongst other things, that *'poorly designed and sited outbuildings can give rise to detrimental impacts on the appearance of host dwelling and the character of the surrounding area'*. It also indicates that the following should be considered *'The impact of how the proposal is sited in relation to the dwelling and surrounding area. This is particularly the case where it would be positioned in front of the property, where it is more likely to result in the introduction of an overly dominant feature, and to detrimentally impact on the character of the surrounding area (especially where this type of development is currently absent).'*
12. As stated previously, the fence that is the subject of the notice is approximately 2 metres tall and extends across the boundary of No 1's garden with Second Avenue and around the corner extending part of the way along the boundary with Third Avenue. This has resulted in a dominant structure in a prominent location that appears appreciably taller than the majority of boundary treatments on other frontages that are in the vicinity of the site. Moreover, its height, length and position, adjacent to the footway, presents a bland and enclosed frontage to passers-by, which contrasts markedly with the spacious and verdant character and appearance of much of the surrounding area. Consequently, the fence is an intrusive and oppressive feature that appreciably harms the character and appearance of the area.

13. The outbuilding is sited in No 1's front garden area adjacent to the boundary with Third Avenue. It is between 2m and 2.5m in height and it is constructed of painted timber. It is highly visible in the streetscene due to its location adjacent to Third Avenue and it visually fills the gap between the front of the house and the pavement. Therefore, the outbuilding has introduced a prominent, incongruous feature into the Third Avenue streetscene that adversely affects the character and appearance of the surrounding area. This is accentuated by the position forward of the frontages of properties in Third Avenue and as a result it detracts from the spaciousness that forms part of the character and appearance of the area.
14. I appreciate the appellant's desire to provide a private, safe and secure place for the dwelling's occupiers especially given the cited health issues of their dependants. Due to the dwelling's location at the road junction the main garden area for the dwelling appears to be to its side rather its rear. I recognise that there is often a difficulty in achieving these aims within gardens for properties situated on corner plots, as is the case here. Moreover, the highlighted health issues of the dependants increase those difficulties and the importance of meeting those aims. However, it appears to me that those aims could be achieved by enclosing a smaller area of the garden, with fencing that was not adjacent to the highway or by planting a hedge to the rear of a lower height fence. Accordingly, I consider that alternatives would be available whereby privacy, security and safety for all the occupiers of No 1 could be achieved without harming the character and appearance of the area.

Planning balance and conclusion - The ground (a) appeal and deemed planning application

15. Dismissing the appeal would mean that the appellant may have to consider other options for meeting their family's living needs. Nevertheless, there is no evidence before me to demonstrate the appeal development is the only means by which such needs may be met. Furthermore, there is no evidence before me to indicate why the outbuilding is required to be sited in this precise location rather than elsewhere in the garden. In my judgement, in this case the appellant's personal circumstances do not outweigh the harm I have found. Accordingly, dismissing the appeal would be a proportionate response given the identified harm. Whether the time periods for compliance with the requirements of the notice are reasonable is dealt with under the ground (g) appeal.
16. For the reasons given above and taking into account all other matters raised, I conclude that the development has caused significant harm to the character and appearance of the area. It follows that the development conflicts with Core Policy 9 of the Amended Core Strategy that seeks, amongst other things, a high standard of sustainable design that is of an appropriate form and scale to its context. It also conflicts with Policies DM5 and DM6 of the Allocations & Development Management DPD which, amongst other things, seek that the rich local distinctiveness of the District's landscape and character of built form should be reflected in the form, design, materials and detailing of development and that planning permission will be granted for the erection of curtilage buildings and means of enclosure providing that the proposal respects the character of the surrounding area.

17. It also does not comply with paragraph 130 of the National Planning Policy Framework which, amongst other things, states that planning decisions should ensure that developments are sympathetic to local character, including the surrounding built environment and landscape setting. The development also does not comply with the guidance in the SPD.
18. In this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.
19. In view of the above, I conclude that the appeal on ground (a) must fail. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The ground (g) appeal

20. The ground of appeal is that the period of time for compliance with the notice falls short of what should reasonably be allowed.
21. The Council seeks compliance with all of the notice requirements within 4 months and the appellant has not stated an alternative time period that they consider is required. Their case is predicated on the basis that they do not consider 4 months is long enough to sort out the fence given the welfare and safety issues involved.
22. I consider that the removal of the outbuilding and the lowering of the height of the fence would be relatively straightforward and would not require a protracted time period for compliance. Nevertheless, I consider that given the personal circumstances of this family that a longer time period is reasonable as it would allow the appellant the time to discuss with the Council an alternative scheme for the boundary treatment, gain planning permission if required for it and to implement that alternative scheme. In my judgment, a reasonable and proportionate time is 9 months in these circumstances whilst ensuring the harms do not continue for longer than necessary. The appeal on ground (g) succeeds to this limited extent and I will vary the notice accordingly.

Formal Decision

23. It is directed that the enforcement notice is varied by the deletion of 4 months and the substitution of 9 months as the period for compliance. Subject to the variations, 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.

D Boffin

INSPECTOR