



Appeal Decision

Site visit made on 4 July 2023

by Ms S Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2023

Appeal Ref: APP/V0510/C/21/3289879

Land known as 1 Mount Pleasant Cottages, 68 Main Street, Pymoor, Ely, Cambridgeshire, CB6 2DY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ross John Taylor against an enforcement notice issued by East Cambridgeshire District Council.
- The notice, numbered OP/18/00347 ENF1, was issued on 24 November 2021.
- The breach of planning control as alleged in the notice is - without planning permission, the erection of a wall with pillars and railings, and gates which exceed 1 metre and adjacent to a highway used by vehicular traffic.
- The requirements of the notice are: (i) remove the wall, pillars, railings and gate from the front boundary of the dwelling or (ii) reduce all parts of the wall, railings, pillars and gates to a height of no more than 1m above ground level, to make the development comply with the terms (including the conditions and limitations) of the permission granted by the Town and country Planning (General Permitted Development)(England) Order 2015 at Article 3, Schedule 2, Part 2, Class A and (iii) permanently remove all constituent materials resulting from the works listed above from the site.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) 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. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a wall with pillars and railings, and gate which exceed 1 metre and adjacent to a highway used by vehicular traffic at Land known as 1 Mount Pleasant Cottages, 68 Main Street, Pymoor, Ely, Cambridgeshire, CB6 2DY as shown on the plan attached to the notice.

The appeal on ground (c)

2. The appeal on ground (c) is made on the basis that that the development is permitted by Class A of Schedule 2, Part 2 of *The Town and Country Planning (General Permitted Development) (England) Order 2015* (the 'GPDO').
3. Class A permits "the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure."
4. This is subject to various limitations at paragraph A.1. Of these, A.1 (a)(ii) limits the height of a means of enclosure adjacent to a highway used by vehicular traffic to 1 metre above the ground. There is no dispute that the means of enclosure is adjacent to a highway used by vehicular traffic. Neither is there any dispute that the means of enclosure is greater than 1m high.

5. Limitation A.1 (c) does not permit development if “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 or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater”. The appellant says that the means of enclosure does not exceed its former height and therefore benefits from permitted development under A.1 (c).
6. However, the means of enclosure cannot be described as works of maintenance, improvement or alteration. The former wooden fence and gate have been removed and a new means of enclosure has been erected. It is of a completely different design, materials and from to the previous one, i.e., it is brick with metal railings on top and contains a metal gate far taller than the former wooden gate. Notably, it can be seen from the photographs submitted that the existing means of enclosure is in a different position to the previous one. The previous means of enclosure stood in a straight line but the existing one has the gate set back from the railings. Furthermore, the submitted photographs show the new structure in front of a tree and the old one behind that tree. Therefore, the works do not fall within the scope of maintenance, improvement or alteration as the previous means of enclosure no longer exists to be maintained, improved or altered.
7. For the above reasons, the works do not constitute permitted development and the appeal on ground (c) fails.

Appeal on Ground (a)

8. The main issue is the effect of the development upon the character and appearance of the countryside.
9. The means of enclosure consists of a grey brick wall and piers with black metal railings on top of the wall, and a metal gate. The brick wall is a dwarf one except on the setback to the gate. The gate and the railings on top of the wall allow views of the front garden and house. I note the Council’s comments in respect of the materials but the grey brick and the black railings co-ordinate with grey and black construction features on the house, such as the windows, roof, cladding and dormers. Whilst the site is within the open countryside, the appeal boundary treatment is associated with a dwelling, and therefore, its domestic appearance does not look out of place.
10. The Council’s Design Guide Supplementary Document (2012) indicates that boundary treatment fronting a highway shall not exceed 1 metre in height, unless in particular circumstances. Given the permeability of the railings, and because the road is a little higher than the ground level of the structure, I consider that the height of the boundary treatment is visually acceptable.
11. Overall, the structure is in keeping with the design of the house and as most of it is visually permeable, I do not find it to be dominant or visually intrusive within the street-scene.
12. I therefore conclude that the development is not harmful to the character and appearance of the countryside. Therefore, I find no conflict with Policies ENV1 and ENV2 of the East Cambridgeshire Local Plan 2015 which seek to protect character and appearance.

Other Matters

13. The Local Highway Authority (LHA) has objected on the grounds that the gate and walls are on the highway, and that the gate should be set back a minimum of 5m from the carriageway edge. The appellant has stated on the appeal form that he owns the land. Boundary disputes are not a matter for me to consider. The gate is set back from the carriageway and it appeared to me at my visit that there is sufficient space for a car to wait on the driveway in front of the gate away from the road while the gate is opened. I therefore find no harm to highway safety. Whilst I note the LHA's comments that their permission is required to undertake these works and would not be given, this is a matter between the parties and is outside of planning legislation.

Conditions

14. The Council has suggested that conditions are applied to ensure that the provision of a scheme for mitigation against the visual harm is addressed. No specific conditions have been suggested and as I find no visual harm, such conditions would be unnecessary.

Conclusion

15. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for a wall with pillars and railings, and gate as described in the notice.

Ms S Watson

INSPECTOR