



Appeal Decision

Site visit made on 6 June 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14TH JULY 2023

Appeal Ref: APP/P1425/C/22/3300253

65 The Promenade, Peacehaven BN10 8NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr George Klat against an enforcement notice issued by Lewes District Council.
 - The notice was issued on 5 May 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of brick pillars, fencing and a gate in excess of 1 Metre in height adjacent to a highway used by vehicles the approximate position of which is shown for identification purposes only in Blue on Plan A.
 - The requirements of the notice are: (i) Permanently reduce the height of the brick pillars, fencing and a gate to no more than 1 metre above ground level, and (ii) Permanently remove all resultant materials and debris from the Land.
 - The period for compliance with the requirements is: Two months from the date the notice takes effect.
 - 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.
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Decision

1. 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.

The ground (c) appeal

2. To be successful under this ground of appeal the appellant would need to demonstrate that the alleged breach of planning control does not constitute a breach of planning control. It is claimed that part of the alleged breach of planning control comprises permitted development under the provisions of Article 3(1) and Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
3. Under the provisions of the GPDO, planning permission is granted for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure subject to various limitations. Such development is not permitted where its height exceeds 1 metre above ground level, where erected or constructed adjacent to a highway used by vehicular traffic, other than in the case of a school. The appeal site is not a school.
4. The appeal site comprises a residential corner plot on the junction of The Promenade and Slindon Avenue. The Promenade is a cliff-top unmade and

unadopted road with an uneven surface running along the southern boundary of the appeal site. Its southern side forms part of a coastal footpath and is lined with occasional benches overlooking the English Channel beyond the cliff edge. Signs at its entrances highlight that it is to be used for access only and that no parking is allowed along its length. Slindon Avenue is a made road adopted by the Highway Authority, with grass verges and hard surfaced footpaths either side.

5. The appellant accepts that the brick pillars, fencing and gate the subject of the enforcement notice exceed 1 metre in height above ground level. It is also accepted that Slindon Avenue is a highway used by vehicular traffic and that the brick pillars and fencing along the eastern boundary of the appeal site are adjacent to it.
6. However, it is claimed that The Promenade does not comprise a highway used by vehicular traffic because it is not an adopted highway. The appellant has also referred to the width and surface of The Promenade, which has been described as narrow and extremely poor, requiring vehicle movements along it to be restricted to walking pace. It is claimed that this limits its use by vehicles to local traffic only for access to residential properties.
7. The GPDO does not provide a definition of a highway and Class A does not specify that an unadopted road is not a highway for the purposes of that part of the GPDO. Section 336 of the Act states that 'highway' has the same meaning as in the Highways Act 1980, which is as follows: "...except where the context otherwise requires, 'highway' means the whole or part of a highway other than a ferry or waterway..."¹.
8. Despite its signage, uneven surface and narrow width, and despite being unadopted, The Promenade is a highway free to be used by vehicular traffic. Indeed, I observed it being used by vehicular traffic to access residential driveways, other adopted roads, and a clifftop public car park during my site visit. Any residential gate, fence, wall or other means of enclosure exceeding 1 metre in height erected adjacent to The Promenade would not therefore benefit from planning permission granted under the provisions of the GPDO.
9. The brick pillars, fencing and gate referred to by the enforcement notice, including parts which extend along the appeal site's western boundary shared with 66 The Promenade, are located adjacent to The Promenade and Slindon Avenue. They exceed 1 metre in height above ground level and as such they do not benefit from planning permission and are in breach of planning control.
10. The appeal under ground (c) must therefore fail.

The ground (a) appeal and the deemed application for planning permission

11. The main issues relevant to the ground (a) appeal and the deemed application for planning permission are the effect of the breach of planning control on:
 - the character and appearance of the area; and
 - the living conditions of occupiers of the appeal site, with particular regard to privacy.

¹ Section 328

Character and Appearance

12. The appeal site is a residential plot, typical for its surroundings, where modestly sized detached dwellings face onto The Promenade and surrounding side streets. The part of The Promenade on which the appeal site is located slopes down west to east, with some boundary walls/fences/gates facing onto it stepping down in height to follow the slope.
13. There is variety in the designs and types of boundary treatment fronting onto The Promenade and the streets that run off it. Low-level boundary treatment between houses and The Promenade are a particularly notable feature of the area, allowing views into and out of properties. This creates a pleasant open and informal character along the length of The Promenade between Mayfield Avenue and Roderick Avenue, with clear views out to sea to the south. Low-level walls along Slindon Avenue enclose small parking and garden areas, creating a relaxed residential setting with open frontages.
14. The brick pillars, fencing and gate the subject of the enforcement notice enclose a garden area and obscure views of the appeal site. They form a dominant and uncharacteristic feature in views along these parts of The Promenade and Slindon Avenue and are notably out of place amongst neighbouring low-level boundary treatment. In the context of the appeal site's pleasant open and informal surroundings, the brick pillars, fencing and gate are of poor-quality design, harmful to the street scenes of both The Promenade and Slindon Avenue on account of their excessive height.
15. I have been referred to other boundary treatment in the surrounding area, which the appellant claims exceed 1 metre in height. Some of those examples² relate to unidentified properties on streets behind The Promenade. Those streets are quite different in character to The Promenade and do not share the same open characteristics as the southern end of Slindon Avenue. Tall boundary treatment along streets behind The Promenade do not greatly influence the character and appearance of the area experienced along The Promenade and Slindon Avenue.
16. Planting forms part of the boundary treatment to 64 The Promenade, which the appellant has referred to as exceeding 1 metre in height. That planting is tall in places and is made up of a mix of vegetation which has a soft and natural appearance. Although that boundary treatment is taller than many nearby boundary walls, it is sympathetic to the informal character of the area and does not entirely enclose that property.
17. The front wall to 67 The Promenade is said to exceed 1 metre in height by the appellant. Be that as it may, it remains a low-level wall which preserves the row of pleasant open frontages along The Promenade.
18. Fencing to Cliff Court appears to be taller than 1 metre in height too. It is an odd form of fencing in this location, which comprises angled slats which allow views into the large care home's garden area. I have also been referred to boundary treatment said to exceed 1 metre in height at 64, 76, 83, 95, and 124 The Promenade, which I saw during my site visit.
19. The examples of tall local boundary treatment referred to above may be lawful, but they are all seen and experienced as uncharacteristic and unwelcome

² Photographs provided at paragraph 2.9 of the appellant's Statement of Case

features along The Promenade. They do not define the character and appearance of the area. As such, they do not suggest to me that the unauthorised brick pillars, fencing and gate at the appeal site have anything other than an additional negative impact on the character and appearance of the area.

20. The breach of planning control harms the character and appearance of the area, contrary to Policy 11 of the Lewes District Local Plan Part 1 Joint Core Strategy 2010-2030 (2016) and Policy DM25 of the Lewes District Local Plan Part 2 Site Allocations and Development Management Policies (2020) (LP2). These require, amongst other matters, development to conserve and enhance the character of the area, and to avoid development of poor design. I assign moderate weight to that harm in the planning balance on account of the minor variances in the height of boundary treatment locally, which includes planting.

Privacy

21. As set out above, a coastal footpath runs along The Promenade. The appellant has referred to a high level of recreational walkers along this route and the need to protect the privacy of their family. I have sympathy with the appellant's position and note that privacy within the large garden area fronting The Promenade would be limited in the absence of boundary treatment exceeding 1 metre in height. However, this is the case with a great many properties along The Promenade and appears to be an historic arrangement and feature of the road.
22. The Council's officer report³ relating to the erection of the appeal dwelling refers to 2 garden areas being considered at that time. The appeal site is referred to as 'the south plot', which was proposed to be served by private amenity space behind parking spaces measuring 5 metres by 5.5 metres and a front garden which would conform with the size of most other gardens that front The Promenade. That officer report does not describe the proposed front garden area as private amenity space and did consider the provision of private amenity space. It is unclear whether the appeal dwelling is currently served by the private amenity space referred to in the officer report.
23. I have been referred to Policy DM8 of the LP2, which requires adequate provision of private amenity space to be made where existing dwellings are to be subdivided into flats or converted into houses in multiple occupation. This is not directly relevant to the appeal site, but I note the point made by the appellant that adequate provision for private amenity space should have been made when the erection of the appeal dwelling was being considered by the Council.
24. The erection of the brick pillars, fencing and gate has increased the privacy enjoyed by the appellant and their family, and improved their living conditions. This is a benefit in favour of the breach of planning control. However, it is a benefit to which I assign only modest weight in the planning balance, considering the established nature of low-level boundary treatment and garden space along The Promenade, where residents of all properties facing onto that road are aware of the opportunities for public views into their properties.

Planning Balance

³ The Council's ref: LW/11/0578

25. The appeal dwelling is a family sized house, occupied by a family which includes children. The garden space fronting onto The Promenade forms an important area for the appeal site's occupants and it is unclear whether the private amenity space which originally formed part of the proposal for the appeal dwelling has been provided or retained. Compliance with the enforcement notice does not prevent the appeal site from being occupied by a family and neither would it cause an unacceptable level of harm to the living conditions of occupiers of the appeal site.
26. The breach of planning control causes harm to the character and appearance of the area contrary to the development plan. The modest weight which I have assigned to the benefits of the breach of planning control does not outweigh the moderate weight which I have assigned to the harm it causes to the character and appearance of the area. The development is contrary to the development plan taken as a whole, and there are no other considerations which indicate planning permission should be granted.
27. The appeal under ground (a) therefore fails and the deemed application for planning permission is refused.

Conclusion

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

L Douglas

INSPECTOR