



Appeal Decisions

Site visit made on 26 October 2023

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2023

Appeal A Ref: APP/X0360/C/23/3314060

Uplands, Basingstoke Road, Spencers Wood RG7 1AP

- 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 A Alleyne against an enforcement notice issued by Wokingham Borough Council.
- The notice was issued on 8 December 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a wall, including pillars, above 1 metre in height.
- The requirements of the notice are to:
 - i. Demolish the wall including pillars and remove all resultant materials from the Land;
 - ii. Restore the Land to its former condition.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the 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 of Decision: The appeal succeeds in part and the enforcement notice is upheld with variation in the terms as set out below in the Formal Decision.

Appeal B Ref: APP/X0360/W/22/3309384

Uplands, Basingstoke Road, Spencers Wood, Wokingham RG7 1AP

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
- The appeal is made by Mr A Alleyne against the decision of Wokingham Borough Council.
- The application Ref 222052, dated 4 July 2022, was refused by notice dated 12 September 2022.
- The development proposed is described as "Retrospective application for double gates and wall to front boundary".

Summary of Decision: The appeal is dismissed.

Application for Costs

1. An application for an award of costs in regard to Appeal A has been made by Wokingham Borough Council against Mr A Alleyne. The application is the subject of a separate decision.

Preliminary matter

2. Appeals A and B basically relate to the same development. However, there are some differences which are set out under the relevant appeal. Appeal B essentially seeks permission to finish off the development, which under Appeal A is incomplete.

Appeal A – s174

The Appeal on Ground (a) and the Deemed Planning Application

3. The appeal on ground (a) is that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed planning application are derived from the allegation. Hence, the development for which planning permission is sought, is the erection of a wall, including pillars, above 1 metre in height.

Main Issue

4. Having regard to the reasons for issuing the notice, the main issue is the effect of the development on the character and appearance of the Land and the surrounding area, which is within a designated green route.

Reasons

5. Uplands is a detached dwelling. A wall, including pillars, has been erected along the front of the site. The development is adjacent to a highway used by vehicular traffic and exceeds a height of 1m. Therefore, it does not benefit from permitted development rights granted under Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO).
6. While there is some variety in the front boundaries in the area, the majority feature hedges, with some also having low red brick walls or modest fencing. This verdant character of front boundaries contributes positively to the pleasant semi-rural streetscene of the area, which is designated as a green route and forms part of the green infrastructure of the Borough. Guidance set out in the Wokingham Borough Design Guide Supplementary Planning Document (2012) (SPD) and A Vision of Our Villages Character Statement (2009) (VOVCS) seeks to ensure that boundaries relate positively to the character of the area and contribute to the quality of the public realm. This guidance, which although not policy is a material consideration, notes that in Spencers Wood, relatively low hedges and walls are in keeping with existing boundary features and therefore high brick walls and tall fences should be discouraged.
7. The wall, including pillars, has been constructed in unsurfaced grey blockwork and spans the majority of the frontage of the dwelling, with an opening to allow vehicle entry. The location, scale, mass, height and materials has resulted in a development that is highly prominent and an overtly urban element within an area with an otherwise semi-rural character. It is at odds with other boundaries fronting onto the main road in the area, resulting in an incongruous feature which is detrimental to the streetscene.
8. Opposite the site is Grade II listed Hill House. The wall and pillars at the front boundary of Hill House, as well as its gates, exceed a height of 1m. However, they are constructed in red brick, with stone detailing at the pillars, and appear to be a well-established element within the streetscene. The wall is also set back from the highway and significantly screened by mature trees and hedges. As such, the wall at Hill House complements its surroundings and is not directly comparable to the wall at the appeal site.

9. Due to the separation distance, with Hill House being set well back from the road behind mature trees, I do not consider the development subject to this appeal to have an adverse impact on the setting of the listed building.
10. The appellant has proposed some landscaping. Planting in front of the wall is not an option as this is highway land, over which the appellant has no control. Plants that would hang down the wall as well as some trees behind the wall has therefore been proposed. This would soften the appearance of the development to a modest extent but would be insufficient to mitigate the incongruous design, scale and massing of the wall, including pillars. In addition, any such planting would take time to establish and its long term retention cannot be guaranteed.
11. The previous boundary consisted of a modest height fence with a strip of trellis above. While there was no planting of any significance the modest scale and simple nature of the wooden boundary was low key. The solid blockwork wall of the development, with its starker more urban appearance, has a detrimental impact on the green route, whereas the fence had a neutral impact. The proposed planting does not mitigate the impact of the development and hence does not protect or enhance the green route, which is part of the green infrastructure of the Borough.

Conclusion on ground (a) and the deemed planning application

12. I conclude that the development causes unacceptable harm to the character and appearance of the site and the surrounding area, which is within a designated green route. Consequently, the development does not comply with Policies CP1 and CP3 of the Wokingham Borough Core Strategy (January 2010) (CS) and Policy CC03 of the Wokingham Borough Managing Development Delivery Local Plan (February 2014) (MDDLDP). Together these policies seek to ensure that development is well designed, in keeping with the character of the area and protects green infrastructure. The development also fails to follow guidance set out in the SPD and VOVCS.
13. There are no material considerations which indicate that the decision should be taken other than in accordance with the development plan. Therefore, the appeal on ground (a) fails and planning permission is not granted.

The Appeal on Ground (f)

14. The appeal on ground (f) is that the steps required by the notice exceed what is necessary. Section 173 of the Act sets out that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the removal of the wall, including pillars, in their entirety. This is consistent with the purpose of remedying the breach of planning control in accordance with (s173(4)(a)), the breach being comprised of the wall, including pillars, in their entirety.
15. The appellant argues that the requirement to remove the wall, including pillars, in their entirety is excessive and that they could instead be reduced in height to 1m. This would reflect the permitted development provisions relating to walls, as set out in the GPDO.

16. Permitted development rights cannot be claimed retrospectively by making changes which return the development to compliance with permitted development limits. Notwithstanding this, such rights could be claimed in the future, following compliance with the notice, and would enable the appellant to replace the wall to a height not exceeding 1m in height. This represents a realistic 'fallback position' for the appellant.
17. The enforcement regime is intended to be remedial rather than punitive. In these circumstances, allowing the appellant to reduce the height of the wall, including pillars, is an obvious alternative to total removal. A height reduction would achieve essentially the same outcome as removing the wall and then replacing it, but with less cost and disruption for the appellant. By not including this lesser option, I consider the requirements of the notice to be excessive.
18. There is no scheme before me setting out a detailed proposal for modifying the wall and pillars. However, I do not consider it necessary in this instance since it would be a straightforward matter to describe an amended requirement in the notice so as to reflect the permitted development rights available. Adopting this approach would not result in any less control over the final outcome than if the appellant complied with the notice as served, prior to exercising their permitted development rights. I will therefore set this out as an alternative to the option of total removal.
19. For the reasons set out above, the appeal on ground (f) succeeds.

Conclusion on Appeal A

20. For the reasons given above, I conclude that the appeal on ground (a) should not succeed. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
21. However, the requirements of the notice are excessive so the appeal on ground (f) succeeds. I shall uphold the notice but exercise my powers under s176(1) of the Act to vary the notice, as set out below in the formal decision.

Formal Decision on Appeal A

22. It is directed that the enforcement notice be varied by deleting the text at section 5 (What you are required to do) and replacing it with the following:
 - Demolish the wall, including pillars, remove all resultant materials from the Land, and restore the Land to its former condition;Or
 - Lower the height of the wall, including pillars, so that no part of the development exceeds a height of 1m above ground level.
23. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B – s78

Main Issue

24. The main issue is the effect of the development on the character and appearance of the site and the surrounding area, including the designated green route.

Reasons

25. Under appeal B, planning permission is sought for the same wall and pillars which have been considered in appeal A, under ground (a). However, they would be finished in render, with stone caps to the pillars, and the addition of wooden gates and wooden infill panels between the pillars.
26. The addition of stone caps, high solid wooden gates and wooden infill panels would increase the height and massing of the boundary treatment and do nothing to soften its appearance. While there are a few other similar height gates in the area, they are ornamental metal gates rather than the solid wooden gates proposed which would further increase the solid massing of the proposed boundary. Render may result in a modest improvement in the appearance of the wall compared to the current grey blockwork. However, there are no similarly rendered front boundary walls in the area, and the development would be visually incongruous.
27. Together, the elements proposed under Appeal B would make the detrimental impact of the boundary treatment on the character and appearance of the area even greater than the current situation. Under Appeal A I found the current situation to be unacceptable, therefore the proposals under Appeal B are also unacceptable. The same landscaping proposed under Appeal A has been proposed under Appeal B. For the reasons set out above, I do not consider that the landscaping would mitigate the impact of the proposed development.
28. The visual impact of boundary hedges in the area, many of which are of a considerable height, is fundamentally different to that of a solid blockwork wall. Consequently, comparing the height of the proposed wall to neighbouring hedges has little if any value and does not weigh in favour of the proposal.
29. I conclude that the development would cause unacceptable harm to the character and appearance of the site and the surrounding area, which is within a designated green route. Consequently, the development would not comply with Policies CP1 and CP3 of the CS and Policy CC03 of the MDDL P. Together these policies seek to ensure that development is well designed, in keeping with the character of the area and protects green infrastructure. The development would also fail to follow guidance set out in the SPD and VOVCS.

Conclusion on Appeal B

30. For the reasons given above and taking into account the development plan as a whole and all other matters raised, I conclude that the appeal should be dismissed and planning permission should not be granted.

H Davies

INSPECTOR