



Appeal Decision

Site visit made on 20 February 2024

By Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2024

Appeal Ref: APP/R5510/C/22/3308618

242 Northwood Road, Harefield, Uxbridge UB9 6PU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mahmud Merali against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The notice was issued on 6 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a front wall, pillars and gate.
 - The requirements of the notice are: (i) Demolish and remove the front wall, pillars and gate. (ii) Remove from the land all debris, items [and] building materials resulting from compliance with point (i) above.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion of 'three months' and the substitution of 'four months' as the period for compliance. Subject to this variation the enforcement notice is upheld.

Background

2. The appeal property contains a modern detached dwelling. The enforcement notice attacks a brick wall, pillars, railings and a railed gate, erected along the property frontage to replace a fence. The structure has an overall height above ground level of around 2.3 metres. An appeal against the Council's refusal to grant planning permission for the structure was dismissed in July 2022¹.

Ground (f) appeal

3. The ground of appeal is that the requirements of the notice are excessive.
4. An enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place, or its purpose can be to remedy any injury to amenity which has been caused by the breach. The notice requires total removal of the structure as opposed to for example, a reduction in its height. Removing the structure in its totality would restore the property to its condition before the

¹ Appeal Ref: APP/R5510/D/22/3299734

breach took place. As a result, although the notice does not state as such, its purpose must be to remedy the breach.

5. It is also possible to remedy a breach of planning control by making any development comply with the terms, including conditions and limitations, of any planning permission granted in respect of the land. This includes where the permission is granted by the Town and Country Planning (General Permitted Development) (England) Order (as amended) (the GPDO). At Article 3 (1), Schedule 2, Part 2, Class A the GPDO grants planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure of a height up to 1m above ground level adjacent to a highway used by vehicular traffic.
6. In the recent appeal, the Inspector considered that there was a fallback position of erecting a gate 1m in height adjacent to the property frontage, relying on the GPDO. I am not persuaded however that this would apply to the entirety of the structure. Article 3 (6) of the GPDO states that the permission granted by Schedule 2 does not authorise any development which, amongst other things, creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons. The previous Inspector clearly concluded that the structure caused harm to highway safety. In doing so, they observed that the structure obstructed the visibility available towards the south when vehicles exited the property onto the main road. In the absence of firm evidence showing otherwise, I cannot be reasonably assured that there would no longer be an obstruction to visibility if the structure were to be reduced in height to 1m. Therefore, altering the structure in that manner would sustain part of the breach. It would not achieve the purpose of the notice and so does not represent an obvious alternative to the notice requirements.
7. Similarly, reducing the height of the structure to that of the fence formerly along the frontage would sustain part of the breach. Besides, given the likely difficulty in accurately ascertaining the height of the former fence, requiring the structure to be altered in such a fashion would lead to uncertainty. No other alternative to the total removal of the structure was drawn to my attention. In my view, there are no alternative requirements to those set out in the notice that would also remedy the breach.
8. As a result, the notice requirements are not excessive. They are proportionate, being the minimum necessary to remedy the breach and achieve the purpose of the notice. The ground (f) appeal fails.

Ground (g) appeal

9. The ground of appeal is that the time allowed for complying with the notice requirements is too short.
10. I am given to understand that the primary purpose of the structure is to prevent a child who has behavioural issues and is in the appellant's care, from accessing the road. The potential for such incidents and the associated risks were explained in the submitted details. I can fully appreciate that the appellant would wish to replace the structure with a similarly secure front boundary treatment. Although little detail was supplied, it is entirely possible that an alternative scheme will require express planning permission. The likely timescales involved in determining such an application are not clear but could

be at least two months. Due to the uncertainty involved, the possibility of the Council exercising its power in s173A (1)(b) of the Act to extend the period for compliance can have little bearing on whether the period specified in the notice is reasonable.

11. On the other hand, there are sound reasons for limiting the period for compliance. The planning harm identified by the previous Inspector and reflected in the reasons for issuing the notice includes the adverse effect of the structure on highway safety. The remedial works are reasonably limited in scale. Such works should be a relatively simple task for a suitably experienced small building contractor. In my estimation, the works are unlikely to take longer than a week or two at most to complete. It is highly likely that there will be a significant number of contractors with the relevant level of expertise to undertake such works and who would be available given a relatively short period of notice. Even if a planning application for an alternative scheme were not determined on time, it should be possible to properly secure the frontage temporarily following the remedial works, for example by using 'Heras' or similar fencing. Therefore, extending the compliance period to six months would unnecessarily perpetuate the breach and the associated planning harm.
12. Taking account of all the above factors, a compliance period of four months would be reasonable and would avoid, so far as is practicable, placing a disproportionate burden on the appellant. Such a period would provide adequate time for the remedial works to be completed, whilst also affording sufficient opportunity to explore with the Council whether planning permission might be forthcoming for an alternative scheme. No injustice would be caused to the Council in varying the notice accordingly. Therefore, the ground (g) appeal succeeds to this limited extent.

Conclusion

13. For the reasons given above I conclude that although the requirements are not excessive, a reasonable period for compliance would be four months and I am varying the enforcement notice accordingly, prior to upholding it.

Stephen Hawkins

INSPECTOR