



Appeal Decision

Site visit made on 4 May 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th May 2024

Appeal Ref: APP/A2335/C/23/3331512

15 Morecambe Road, Morecambe, Lancashire LA3 3AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Mathew Jeffries against an enforcement notice issued by Lancaster City Council.
 - The notice was issued on 14 September 2023.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a wall with fence panels above and supporting posts along the boundary as shown in the photograph at Appendix B.
 - The requirements of the notice are to:
 - i. removal all fence panels and associated posts of the boundary structure indicated between point A and B of appendix C; and
 - ii. reduce the height of the wall to 1m either side of the driveway on Warley Avenue, for a 0.75m set back from the highway. Indicated between points C – D, and E – F on appendix D; and
 - iii. remove any resultant material and debris from the land.
 - The period for compliance with the requirements is: 2 months from the date this 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 enforcement notice is corrected by:
 - deleting the words from paragraph 3.1 and substituting them for 'without planning permission the erection of a wall with fence panels above and supporting posts along the boundary as shown in the photograph at Appendix B and the erection of walls as shown in the photograph at Appendix D'; and
 - deleting the word 'removal' from paragraph 5i and substituting it for 'remove'.
2. Subject to these corrections, 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 Enforcement Notice

3. I have a duty to ensure that the enforcement notice is in order. The notice alleges operational development. Section 173(1)(a) of the Act sets out that an enforcement notice must state "the matters which appear to the local planning authority to constitute the breach of planning control." An enforcement notice complies with this requirement if it enables any person receiving a copy of the notice to know what those matters are. In deciding whether a notice satisfies

the statutory requirement a test applied is whether the notice fairly tells the recipient what they have done wrong and what they must do to remedy it. The recipient must also be able to find out from within the four corners of the document what they are required to do. The requirements should square up with and follow logically from the allegation.

4. Under s176(1) of the Act, as amended, it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms provided I am satisfied that the correction or variation will not cause any injustice. The Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing.
5. In this case, the allegation refers to a wall with fence panels above, yet the requirements also refer to two walls that have been erected either side of the driveway off Warley Avenue. Given the photographs appended to the notice and the evidence before me, correcting the allegation to reflect all the requirements would not cause injustice to the parties.

Reasons

The appeal on ground (c)

6. An appeal under ground (c) is that those matters do not constitute a breach of planning control. The appellant advances two reasons why the development does not amount to a breach of planning control.
7. A low boundary wall has existed at the appeal property along the back edge of the footpath on Warley Avenue since the dwelling was built. Historically, on top of that, there was a concrete panel fence. More recently, for a short period of time, there was a timber fence. However, there is no dispute that the current fence, which rises above and has been built behind the low wall, has been built within the four years prior to the notice being issued.
8. The appellant claims that the walls and fences are permitted development (PD) as they do not exceed two metres in height and are not adjacent to the highway. On this basis, they say that planning permission is not required and that no breach of planning control has occurred. Therefore, the walls and fence would need to accord with Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the "GPDO").
9. This class of the GPDO permits "*the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.*" Development is not, however, permitted by Class A if "(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1 metre above ground level"; and "(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level."
10. The low boundary wall along Warley Avenue was present before the notice was issued, but its appearance has changed. As such, it has been improved or altered, and the notice does not require the appellant to carry out any remedial works to the low boundary wall.
11. The fencing directly behind it replaced a concrete panel fence and a

replacement timber fence. Irrespective of whether the fencing is free standing, the fence panels function with the wall as one single boundary between the appeal property and Warley Avenue. Hence, it is reasonable to consider the boundary jointly.

12. Although the appellant says that the now replaced timber fence was two metres high, there is no substantive evidence to that effect or any details of the height of the concrete panel fence. The onus is with the appellant to demonstrate their case. Hence, I cannot be certain that the timber fence did not exceed the height of the former concrete panel fence and, as a result, that the fence complied with Class A of Schedule 2, Part 2 of the GPDO when it was built. The current combination of the walls and fencing is over a metre high, so matters relating to the style, type, or materials used, together with opinions about what the Council thought about the replacement do not change this.
13. The appellant says that the fence is two metres high from the ground level of the garden, free standing, not reliant on the existing wall, and therefore not adjacent to the highway. It is their opinion that the fence is PD by virtue of Class A of Schedule 2, Part 2 of the GPDO.
14. The term 'adjacent' is not defined by the Act or in the GPDO. The Cambridge Dictionary states that the meaning of 'adjacent' is 'very near, next to, or touching'. However, the courts have established that the word 'adjacent' does not necessarily mean that the fence has to be abutting or touching the highway. In the case of *Simmonds v SSE and Rochdale MDC [1981]* it was held that a fence higher than one metre and less than one metre from a footway to a highway did abut the highway. It is therefore a matter of fact and degree based on the specifics of the case.
15. The fence along the Warley Avenue boundary is sited directly behind the low wall, which abuts the pedestrian footway next to the carriageway. Due to its position, I find that the fence is adjacent to the highway. Furthermore, the walls erected on either side of the driveway off Warley Avenue abut either the existing low wall or are very near the pedestrian footway. They are also over a metre high. Hence, both walls on either side of the driveway are also adjacent to the highway.
16. I acknowledge that the appellant has engaged with the Council about the boundary to the front of the appeal property, which has resulted in changes, but I have considered the appeal on its merits. On this basis, the wall, fence panels and supporting posts are development that required planning permission at the time when the enforcement notice was served as they were not PD. As such, the appeal on ground (c) fails for the reasons explained.

The appeal on ground (a)

17. The main issues are the effect of the proposal on: (a) highway safety in Warley Avenue, with regards to pedestrian and vehicle visibility splays; and (b) the character and appearance of the area.

Highway safety

18. Planning is principally concerned with the public interest. Furthermore, when considering whether to grant planning permission for the development, my decision needs to account for any potential occupier of the appeal property, not just the appellant's circumstances.

19. Bearing this in mind, the height, siting, and solid nature of the walls and fencing mean that drivers leaving the driveway off Warley Avenue in forward gear either have limited or no visibility of any person using the footway unless they are directly in front of the driveway. The situation is worse if the driver reverses off the driveway, regardless of the vehicle type and the driveway's width. The potential exists for conflicts to arise even if there are limited traffic movements. The poor visibility also affects users of the footway, especially as they are not able to see and judge whether it is safe to pass the driveway. The effect of any conflict would be detrimental to any vulnerable road user.
20. Visibility of vehicles using Warley Avenue is slightly better due to the footway and the straight alignment of the road. However, there is no mechanism that can control how people access their driveways. Thus, if a vehicle reverses off the driveway, there is no or limited visibility of oncoming vehicles until the reversing vehicle is across the footway and partially on the road.
21. With a view to overcoming the issue identified, the appellant is willing to lower the height of the wall with 1a Warley Avenue to a metre high, two metres back from the footway. This would improve the visibility of road users approaching from the south-west, although it would not satisfy the requirements of the Highway Authority. No changes are proposed in the other direction. Therefore, the unacceptable visibility conditions would remain to the detriment of highway users. I note the reasons why the appellant does not wish to do so, but neither matter outweighs the harm to highway safety that exists.
22. I therefore conclude that the proposal has an unacceptable highway safety effect in Warley Avenue, with regards to pedestrian and vehicle visibility splays. This harm carries substantial weight. The proposal conflicts with Policies DM29 and DM60 of the Local Plan for Lancaster District – Part Two: Review of the Development Management DPD (Local Plan). These policies, among other things, supports development proposals that incorporate suitable and safe access to the existing highway network and ensure that highway safety is maintained or improved during occupation phases of development.

Character and appearance

23. The appeal property occupies a prominent corner plot at the junction of Morecambe Road and Warley Avenue. Residential development characterises the area, with properties on Morecambe Road set back behind low boundary walls and/or landscaping that contribute to a sense of openness.
24. My attention has been drawn to numerous boundary treatments in Warley Avenue, Warley Drive and Homfray Avenue. I do not know how each one came to be, but many appear to have been in situ for several years and inform the area's character. Properties on these roads are set behind low walls/fences, or landscaping, but they are sited closer to the roads, and there are examples of higher front and side boundary treatments, especially on corner plots, which means the open character associated with Morecambe Road is not experienced.
25. The style and finish of the fence differ from those found in the local area, but the wall and fences respond to the character and appearance of the host property, and a variety of finishes can be found locally. The siting of the walls and fence responds to the extent of the appeal property and reflects the siting of other boundary treatments in the area. The length of the fence to the side reflects the appeal property's corner plot and similar local corner plots.

26. The boundary treatment is higher than some of the examples referred to which characterise the area, but it is comparable to others, which have a similar relationship in character and appearance terms to the road that they bound.
27. For these reasons, I conclude that the proposal makes a positive contribution to the surrounding townscape as it has regard to local distinctiveness, siting, layout, materials, and scale so that there are no significant detrimental impacts on visual amenity. The proposal accords with Local Plan Policy DM29 and paragraph 131 of the National Planning Policy Framework (the Framework). I attach significant weight to that in accordance with Framework paragraph 139.

Conclusion on ground (a)

28. I have not found harm to the character and appearance of the area, and I afford that matter significant weight. I also note the reasons why the walls and fencing are sought to provide security and private amenity space. I attach these matters limited positive weight. However, these matters, individually or collectively, do not alter or outweigh the unacceptable harm to highway safety to which I afford substantial weight. As such, I conclude that the proposal does not accord with the development plan as a whole, and there are no material considerations that indicate that I should take a decision other than in accordance with it. As such, ground (a) fails, and the deemed application for planning permission is dismissed.

Conclusion

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

Andrew McGlone

INSPECTOR