



Appeal Decision

Site visit made on 7 May 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th June 2024

Appeal Ref: APP/R0660/C/23/3322419

Land at The Weir, 9a Daveylands, Wilmslow, SK9 2AG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Gary James Hussey against an enforcement notice issued by Cheshire East Council.
- The notice was issued on 13 April 2023.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a boundary wall, electric gates and pillars shown in their approximate position marked in a green line on attached plan marked 'Plan B'.
- The requirements of the notice are to:
 - a) Remove the boundary wall, electric gates and pillars shown in the approximate position edged green on the attached plan marked 'Plan B', in their entirety.
 - Or
 - b) Reduce the height of the boundary wall, electric gates and pillars shown in the approximate position edged green on the attached plan marked 'Plan B', to a height no greater than 1 metre.
 - c) Remove from the land all resultant material and debris following compliance with a) or b) above
- The period for compliance with the requirement is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 23 May 2024.

The ground (c) appeal

1. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the enforcement notice (the notice) do not constitute a breach of planning control. The burden of proof is upon the appellant.
2. It is not permissible to separate out parts of one development and to argue that those benefit from the grant of planning permission by way of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO) and that other parts of the same development are to be assessed separately. As one building operation, falling within the meaning of development as set out in section 55 of the Town and Country Planning Act 1990, either the whole of the development is permitted development or none of the development is permitted development.
3. The construction of the boundary wall, gates and pillars were clearly carried out as one building operation. It would be inconceivable to consider that the gates

would have been constructed without the walls and pillars. Therefore, the entirety of the works amount to a single form of development. By reason that part of the development is undisputedly not permitted development, ie the wall and pillars, none of it is permitted development.

4. Consequently, the ground (c) appeal fails.

The ground (a) appeal and the Deemed Planning Application

Preliminary Matter

5. Planning permission is sought for the erection of a boundary wall, electric gates and pillars. Under the ground (f) appeal the appellant seeks to reduce the height of the wall to 1.4m and the pillars, excluding those to which the gates are attached, to 1.75m. Whilst their preference is to retain the gates and attached pillars as they are, they are prepared for them to be reduced in height to 1.75m if I find they are not permitted development, although this would require new gates as the existing one is composite and therefore cannot be altered.
6. Section 177(1)(a) of the Town and Country Planning Act 1990 (the Act) only allows the grant of planning permission in respect of matters stated in the Notice as constituting a breach of planning control "whether in relation to the whole or any part of those matters". The reduction in the height of the walls, pillars and gates would be part of the matters alleged in the Notice and therefore can be considered under s177(1)(a).

Main Issue

7. The main issue is the effect of the development on the character and appearance of the area.

Reason

8. Daveylands is a residential road comprising substantial properties ranging between 2 and 4 stories in height. Boundary treatments along the road include walls, close boarded timber fencing and soft planting. Although there is a variety of boundary treatments, along the north side of the road, the context of which the appeal property is read, property frontages with the road predominantly comprise a low wall with high hedging above.
9. The appeal property is located with the Wilmslow Parks area as designated in the Development in Established Residential Areas: Three Wilmslow Parks Supplementary Planning Guidance 2004 (SPG). The SPG identifies that the Victorian road boundary generally consists of stone walls, as is the case on the north side of Daveylands.
10. The appeal property is one of several properties that, prior to the unauthorised development taking place, had a front boundary wall that matched the uniform front boundary walls of other properties lining the north side of Daveylands and continues along Macclesfield Road, punctuated only by access points. The uninterrupted rhythm of the wall provides a positive contribution to the distinctiveness of the locality and the overall character and appearance of the area.
11. The appeal property is a rendered dwelling with a modern appearance and therefore the previous wall would have done little to aesthetically complement

the dwelling, unlike the more substantial, period properties to the west of the site. Moreover, properties to the east of the dwelling have no boundary wall treatment. Therefore, being the end dwelling of those properties with a boundary wall frontage, the loss of the previous wall has not unduly disrupted the rhythm of the remaining wall along the road.

12. The existing wall is significantly higher than the adjoining historic wall and composed of a render finish with stone pillars, base and copings. Due to its height, the wall is an unduly dominant feature within the streetscene, starkly contrasting with the lower, historic boundary wall and the softer boundary treatment to the east. Moreover, due to the road slightly sloping down from west to east, the step up in height of the wall from the adjacent historic wall fails to reflect this, exacerbating its incongruity.
13. Whilst the materials do not match those of the adjacent historic wall, they do match those of the appeal dwelling and are found in the palette of materials within the locality. Nevertheless, due to the height of the wall and pillars, the overall extent and lighter appearance of the materials compared to the historic wall highlights the incongruity of the development in the streetscene.
14. I now turn to the proposed alternative scheme of reducing the height of the wall, pillars and gates. The reduced height of the wall would match that of the adjoining historic wall. Similarly, the pillars would be reduced to a height matching that of the gate post to that wall. Consequently, the uniform height of the boundary wall along the frontages of the properties along Daveylands would be retained. Whilst the materials between the existing wall and the historic wall would remain different, the reduction in the height of the wall and pillars would reduce the expanse of painted render to such an extent that it would no longer be incongruous. Moreover, the stone finish would likely weather and darken over time to become closer in colour to the neighbouring wall.
15. Regarding the gates and their adjoining pillars, as I have found that these are not permitted development under the ground (c) appeal, these would also be reduced to 1.75m in height to match the other pillars. Although the gates are of a solid construction, their reduction in height and retained setback position from the road and the reduction in the height of the wall would create greater intervisibility between the road and the dwelling, thus alleviating the previous Inspector's concerns¹ that they do not allow a good level of visual connection between them.
16. Policy TH4 of the Wilmslow Neighbourhood Plan 2019 (the NP) states that gates and security devices are not encouraged. However, requirement b) of the notice allows the retention of the gates, albeit so long as they are reduced in height. Therefore, in principle, gates are acceptable at the appeal property. I note there are examples of other entrance gates along this stretch of Daveylands.
17. I find therefore that the proposed alternative scheme of reducing the wall to 1.4m in height and the pillars, gates and their adjoining pillars to 1.75m in height would not be unacceptably harmful to the character and appearance of the area. As such, the proposed development would comply with Policies SD2 and SE1 of the Cheshire East Local Plan Strategy 2017; Policy GEN1 of the

¹ Appeal reference APP/D/22/3303549

Cheshire East Site Allocations and Development Policies Document 2022; and, Policies TH4 and H2 of the NP, which, amongst other things, seek to ensure development contributes positively to an area's character and identity; makes a positive contribution to sense of place; reflect local character; respects the characteristics of the specific area; and, delivers high quality design. Furthermore, it would comply with the guidance set out in the SPG and accord with the design objectives of the National Planning Policy Framework.

Conditions

18. I have not been presented with any suggested conditions to impose in the event I allow the ground (a) appeal. In the interests of clarity and for the avoidance of doubt, a condition is necessary confirming the approved plans.

Conclusion on the ground (a) appeal and the deemed planning application

19. For the reasons given above, having considered the development plan as a whole and all material considerations, the ground (a) appeal and the deemed planning application should succeed in so far as it relates to the modified development only and planning permission will be granted for the alternative development of reducing the height of the wall to 1.4m in height and the pillars and gates to 1.75m in height.

The ground (f) appeal

20. This ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
21. Having regard to section 173(4) of the 1990 Act as amended and the stated requirements of the notice, it is reasonable to conclude that the purpose of the notice is to remedy the injury to amenity.
22. The appellant submits that the complete removal of the development or its reduction to 1m in height extends well beyond what is reasonably required to remedy any perceived impacts and has suggested amendments to the scheme. These have been considered as part of the appeal on ground (a), the conclusion of which is that the development incorporating the suggested alterations would not give rise to harm which would result in conflict with relevant policies of the development plan.
23. If the requirements of the notice are varied so as to allow the development to remain in a modified form, as I have found in my consideration of the ground (a) appeal, the injury to amenity would be remedied. As such, the purpose of the notice would be achieved. However, the grant of planning permission as a result of the successful ground (a) appeal triggers the provisions set out under section 180 of the Town and Country Planning Act 1990 which would effectively mean that the enforcement notice would cease to have effect insofar as it would be inconsistent with that grant of planning permission. Therefore, I shall leave the allegation and the requirements of the EN as they are.
24. For the avoidance of doubt, in order to avoid being in breach of the notice, the approved alterations to the development would need to be completed within the time for compliance as set out in the notice.

25. The ground (f) appeal therefore fails.

Conclusion

26. For the reasons given above, I conclude the appeal should succeed in part only, and I will grant planning permission for the erection of a 1.4m high wall and 1.75m high pillars and gates in the approximate position edged green on the plan marked 'Plan B' attached to the enforcement notice, but otherwise I will uphold the notice. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Formal Decision

27. The appeal is allowed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended in so far as it relates to the reduction in the height of the boundary wall to 1.4m and the pillars and electric gates to 1.75m in the approximate position edged green on the plan marked 'Plan B' attached to the enforcement notice at Land at The Weir, 9a Daveylands, Wilmslow, SK9 2AG as shown on the plan attached to the notice, subject to the following condition:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing No.1, drawing No.2 and drawing No.4.

28. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the boundary wall, electric gates and pillars in the approximate position edged green on the plan marked 'Plan B' attached to the enforcement notice at Land at The Weir, 9a Daveylands, Wilmslow, SK9 2AG and planning permission is refused in respect of the retention of the boundary wall, electric gates and pillars at their existing height and the reduction of the electric gates and attached pillars to 2m in height at Land at The Weir, 9a Daveylands, Wilmslow, SK9 2AG on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A Walker

INSPECTOR