



Appeal Decision

Hearing held on 6 June 2024

Site visit made on 6 June 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 02 August 2024

APP/R0660/C/23/3330021

Jahanara Bhavan, Brereton Heath Lane, Brereton Heath, Cheshire CV12 4SZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Anam Islam against an enforcement notice issued by Cheshire East Council.
 - The notice was issued on 23 August 2023.
 - The breach of planning control as alleged in the notice is the erection of a boundary wall exceeding one metre in height adjacent a highway and two metres in height where not adjacent a highway.
 - The requirements of the notice are
 - a) Reduce the height of the wall (including the brick piers and any infill panels) so that no part of the structure exceeds one metre in height between points A-B and C-D on Plan B attached to this notice.
 - b) Remove all materials resulting from compliance with requirements a) from the Land.
 - The periods for compliance with the requirements is 2 months for requirement a) and 3 months for requirement b).
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) 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. It is directed that the enforcement notice is corrected by:
 - i) Deleting the allegation in full and replacing it with "the erection of a front boundary wall, excluding gate posts and gate, exceeding 1 metre in height adjacent to a highway between points A-B and C-D shown on plan B attached to this notice."And varied by
 - ii) Deleting the time periods for compliance at paragraphs a) and b) in Section 6 of the notice in full and replacing it with "The period for compliance for both requirements a) and b) is 4 months".
2. Subject to the correction and variation, 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.

Preliminary matters

3. There have been previous planning appeals and a Certificate of Lawful Development appeal¹ in relation to front boundary treatments. The appellant has referred to extracts of previous decisions where he considers those to be relevant and third parties have referred to previous planning applications and appeals. I will address those matters where relevant but will assess the development on its own merits as various changes have been made to the development since 2021.

The Notice

4. It is the duty of the Inspector to put the notice in order. The allegation in the notice is "the erection of a boundary wall exceeding one metre in height adjacent a highway and two metres in height where not adjacent a highway."
5. The Council confirmed that the enforcement notice seeks to attack only the sections of wall marked A-B and C-D on Plan B attached to the enforcement notice. I will therefore correct the allegation to "the erection of a front boundary wall, excluding gate posts and gate, exceeding 1 metre in height adjacent to a highway between points A-B and C-D shown on plan B attached to this notice." Both parties agreed that such a correction would not cause injustice. Furthermore, the corrected allegation would provide consistency between what is alleged and the requirements.

Whether what is alleged has occurred as a matter of fact (ground b)

6. There is no formal appeal on ground (b) before me which relates to whether what is alleged has occurred as a matter of fact. However, the appellant's ground (c) arguments are made on the basis that the allegation is incorrect. The appellant is relying upon the works carried out being alterations rather than the erection of a boundary wall. As the appellant maintains that what is alleged has not occurred as a matter of fact, that is a ground (b) argument which needs to be addressed here.
7. There is no dispute between the parties that the existing gates with stone pillars to the front of the appeal site have formed part of the original boundary treatment since at least 1999. However, the original low stone wall with railings on top to the front of the appeal site was replaced in 2021 leaving just the stone pillars and the gates. In order to erect the red brick wall to the front which includes the sections between A-B and C-D, the original stone wall with railings has been removed. Apart from the stone pillars and the gates, there is no evidence before me that any other part of the front boundary which includes what exists between points A-B and C-D still exists. A new wall has been erected to the front of the appeal site and the development forms part of that wall.
8. The appellant referred to not all of the boundary treatment to the appeal site having been replaced. There is a modest section of a more traditional brick wall between the appeal site and Pawaki towards the rear and some original railings are also visible at the rear boundary. However, the majority of the rest of the boundary treatments are new and even if I considered all of the boundary treatments, the extent of the work that has been carried out goes beyond alterations to an existing boundary treatment.

¹ APP/R0660/X/22/3307271

9. Accordingly, I find that as a matter of fact that "the erection of a front boundary wall, excluding gate posts and gate, exceeding 1 metre in height adjacent to a highway between points A-B and C-D shown on plan B attached to this notice" has occurred.

An appeal under ground (c)

10. An appeal under ground (c) is a that the matters alleged in the notice do not constitute a breach of planning control. The appellant maintains that the alterations to the boundary treatment are permitted development. I have previously found that the development does consist of the erection of a wall rather than alterations.
11. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) sets out permitted development rights for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure subject to limitations which are
- (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 carrying out the development, exceed-*
- (i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;*
- (ii) in any other case, 1 metre above ground level;*
- b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level*
- (c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed whichever is the greater.*
12. Paragraph A.1(a)(ii) restricts permitted development which is adjacent to a highway and not for a school to 1 metre above ground level. The parties do not dispute that the development is adjacent to the highway and is in excess of 1 metre. The limitation set out at A.1.(a) (ii) therefore applies and the development falls outside permitted development.
13. Paragraph Class A(c) deals with alteration, maintenance or improvement of a wall not its construction or erection. An altered wall is permitted so long as it would not exceed its former height or if greater, the limits referred to in A.1(a) or (b). This paragraph does not alter the limitation set out for the erection of a wall adjacent to a highway in A.1(a) (ii).
14. The appellant has provided an extract from the Certificate of Lawful Development Certificate appeal decision in support of its arguments under ground (c). The appellant takes the view that the appeal was dismissed solely on the grounds that the brick pillars exceeded a former railings height of 1.92 metres. However, the extract provided also refers to the "new pillars and new garden wall" and also to "the development being taller than 1 metre adjacent

to the highway” (my emphasis). Irrespective of whether or not the development is now below a former height, it is still the case that where the development consists of the erection of a wall rather than alteration, any development over 1 metre adjacent to a highway will be excluded from permitted development under A.1(a)(ii).

15. The appellant sought to rely upon the case of *Prengate Properties Ltd v SSE* [1973] 25 P & CR 311. However, the facts of that case related to the function of a wall and whether permitted development rights under Part 2, Class A can apply to walls without some function of enclosure. However, the dispute between the parties is whether the development is not permitted due to the wording of the limitations. A failure to comply with any one of the limitations takes the development outside of permitted development.
16. The development falls squarely within the category of development not permitted under A.1(a) (ii). Since the development is not permitted development and does not benefit from any other planning permission, it constitutes a breach of planning control. The appeal on ground (c) must fail.

An appeal under ground (a) and the Deemed Planning Application (DPA)

17. The terms of the DPA directly derive from the amended allegation which is the erection of a wall between points A-B and C-D. However, the appellant indicated at the hearing that the development had been reduced further since the service of the notice. Having viewed the site, I consider that there is no material difference between what has been enforced against and photographs submitted at the hearing dated October 2023 showing further reductions. However, the appellant also proposed an alternative scheme with heights of 1.7 metres for the wall, insets and for the pillars. I will therefore consider the development enforced against under ground (a) and the proposed alternative scheme as it does form part of the development.

The Main Issue

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

Reasons

19. The character of front boundary treatments along Brereton Heath Lane is largely of low walls with planting or hedges behind them. Brereton is a settlement in the open countryside. Whilst the range of property styles is mixed, the nature of the boundary treatments reflect the rural location. Jahanara Bhavan is a single storey detached dwelling with white render and a blue tiled roof set in a generous plot. Prior to the development taking place, the front boundary was made up of a low stone wall with railings and hedging behind those railings. Access to the appeal site was through the railings style gate with stone pillars to either side to the front.
20. Whilst the stone pillars and gate remain, the remainder of the boundary treatment to the front of the appeal site consists of a red brick wall with insets of polycarbonate panels. Whilst the Council has chosen to enforce against only part of the front boundary treatment, the development has to be assessed in its context. Red brick has also been used for the side walls. The development itself forms part of a modern extensive boundary treatment which is at odds with the traditional character of the surrounding area.

21. In terms of design, scale and bulk with the use of polycarbonate insets with red brick and no soft landscaping, the development is incongruous and out of keeping with the traditional boundary treatments which form part of the character of the area. The appellant refers to what he considers to be similar front boundary treatments at Silverburn and Oaklands. I did see these properties as part of my site visit. Whilst they do include brick walls and some pillars, the designs are relatively simple with the only insets consisting of a green hedge. There are also mature trees both within the front gardens themselves and within the verge which are not present at the appeal site which adds to the prominence of the front boundary treatment at the appeal site. Those boundary treatments are not comparable in terms of design, scale or location to the boundary treatment at the appeal site.
22. The appellant had referred to a planting condition mitigating any harm in his evidence. However, the insets of solid polycarbonate fencing means that planting behind the boundary treatment would not overcome the harm to the character and appearance that the development causes.
23. The appellant has referred to his wish to retain the development for security reasons, in view of the lack of natural surveillance from neighbouring properties or passing pedestrians. However, there are cameras at the appeal site and the retention of the solid brick walls to either side which are higher than the existing front boundary treatment and electronic gates will continue to provide elements of security. There is no information before me to indicate that the appeal property is in a location that makes it more susceptible to crime than other dwellings in a rural setting. As such, I give this justification minimal weight, which does not outweigh the harm I have identified to the character and appearance of the area.
24. For the reasons given, the development does harm the character and appearance of the area. It is therefore contrary to Policy GEN1 of the Site Allocations and Development Policies Document (SADPD) which refers to development fitting in with the overall form and layout of its surroundings. It is also contrary to Policy SE1 (Design) of the Cheshire East Local Plan Strategy (CELPS) states amongst other things that development should protect or enhance the distinctiveness and character of the settlement. I find Policy HOU10 (Layout and Design of New Housing) of the Brereton Neighbourhood Plan to be less relevant than the other policies relied upon by the Council.

Alternative Scheme

25. The appellant has proposed a reduction to the wall, insets and pillars to 1.7 metres. However, I do not consider that such a reduction would be materially different to the existing development. In particular, a slight reduction in height would not overcome issues of design, materials and the incongruous nature of the development in this location.
26. I therefore find the alternative scheme would also harm the character and appearance of the area and would also therefore be in conflict with Policy GEN1 of the SAPD and Policy SE1 of the CELPS.

An appeal under ground (g)

27. An appeal under ground (g) is that the time for compliance is too short. The notice has a compliance period of 2 months to reduce the boundary treatment and a further month to remove any materials arising from that reduction. The appellant has referred to the availability of contractors and the need to carry out the works and has asked for the compliance periods of 2 and 3 months to be increased to 5 and 6 months, respectively.
28. The requirement is to reduce two sections of the wall between the points A-B and C-D. The actual reduction of those sections is very unlikely to take 2 months and similarly removal of resultant materials is likely to take days. The longest period is likely to be needed to find suitable workmen to carry out the work. Whilst the appellant referred to needing time to design a new boundary treatment at the hearing, the requirement is to reduce only. In the circumstances, I consider that a period of 4 months to comply with both requirements is reasonable and would allow a slightly longer period to arrange for the work to be carried out and for materials to be removed. I will vary the compliance period accordingly. The appeal under ground (g) therefore succeeds to the extent.

Conclusion

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

E Griffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Giles Atkinson

Barrister, Six Pump Court

Harry Dodd

Director, NUKO Planning

Anam Aslam

Appellant

FOR THE LOCAL PLANNING AUTHORITY

Zafer Faqir

Senior Planning Officer
(Enforcement), Cheshire East
Council

DOCUMENTS SUBMITTED AT THE HEARING BY THE APPELLANT

Document 1: Prengate Properties Ltd v SSE [1973] 25 P & CR 311

Document 2: Two photographs including the rear railings

Document 3: Two photographs of the boundary treatment dated October 2023.