



Appeal Decision

Site visit made on 27 August 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2024

Appeal Ref: APP/X4725/C/23/3330165

Land at April Cottage, Ouchthorpe Lane, Wakefield WF1 3HU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Mihail Onu against an enforcement notice issued by the City of Wakefield Metropolitan District Council.
 - The notice was issued on 15 September 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a boundary wall exceeding 1m height adjacent to a highway as shown by the blue line on the plan attached to the enforcement notice.
 - The requirement of the notice is to reduce the height of the wall to not more than one metre.
 - The period for compliance with the requirement is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. 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

2. The postcode in the banner heading above is taken from the appellant's appeal form since none was given in the enforcement notice.
3. The appellant previously submitted a planning application for a proposed development described as 'front boundary walls lifted in height from 1m to 2m, new pedestrian gate and piers to front boundary wall' which was dismissed on appeal¹. That development was partially constructed at the time of the previous Inspectors visit however, since it is essentially the same boundary wall proposed in this appeal, it is against that background that I have considered this appeal.
4. Since the notice was issued the Council have adopted the Wakefield District Local Plan Adopted January 2024 (Local Plan). The Council were asked to provide the policies which they intend to rely on, upon which the appellant was given the opportunity to comment.

¹ APP/X4725/W/20/3246240

The appeal on ground (a) the deemed planning application

5. The main issues are:

- Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and development plan policy and the effect on the openness of the Green Belt.
- The effect of the development on the character and appearance of the area; and
- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

6. Policy LP62 of the Local Plan relates to existing uses in the Green Belt and states that small scale limited development will be permitted subject to a number of criteria, including that extensions and alterations are not disproportionate over and above the size of the existing building when originally constructed.
7. Paragraph 154 of the Framework indicates that the construction of new buildings should be regarded as inappropriate in the Green Belt except in a number of clearly defined circumstances, including at 154 c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. Policy LP62 of the Local Plan is consistent with the Framework in this respect.
8. As set out by the previous Inspector the term 'building' refers to any structure or erection and therefore includes boundary walls. The wall is almost double the height of the original, accordingly, and as found by the previous Inspector, it represents a disproportionate addition over and above the size of the original building.
9. It therefore fails to meet the exception at paragraph 154 c) of the Framework and is inappropriate development in the Green Belt.

Openness

10. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness in terms of the Green Belt is the absence of development and has been found by the courts to have a spatial as well as visual aspect.
11. The wall is a relatively substantial structure which extends for a considerable length along two boundaries of the appeal site. By reason of its height and solidity the wall has a significant enclosing effect, thus reducing the openness of the Green Belt both in spatial and visual terms. The harm caused to openness is limited.

Character and appearance

12. As a result of its height, length and prominent roadside location, the wall appears as a dominant feature that appreciably harms the character and appearance of the area. This harmful effect is limited by the use of materials which are appropriate to the host dwelling and the existence of the tall boundary features on the opposite side of the road. The wall is nevertheless contrary to Policy LP56 of the Local Plan which requires, amongst other things, that proposals respect, and where appropriate enhance the character and overall quality of the locality in terms of design, scale, and height.

Other considerations

13. I acknowledge the appellant's comments regarding the safety of their family and that they want to enjoy the privacy of their garden, without unnecessary noise, fumes, and headlights from passing traffic. However, since there is no substantive evidence regarding the nuisance caused by traffic, or that the appeal development is the only way such privacy and screening needs could be met, this is a matter of little weight.
14. That there is no identified harm to highway safety is a neutral matter.

Green Belt Balance

15. Paragraph 152 of the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework goes on at paragraph 153 to require that substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
16. I have found harm to the Green Belt by way of inappropriateness and harm to the character and appearance of the area. The considerations raised in support of the development do not clearly outweigh the harm that I have identified to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist. Therefore, the development conflicts with the Green Belt protection aims of Policy LP62 of the Local Plan and the Framework.

Conclusion on ground (a)

17. For the above reasons, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (g)

18. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant suggested a period of nine months, this is largely based on a misunderstanding about when the notice takes effect.
19. Where an appeal is made against an enforcement notice, regardless of the grounds, the appeal "stops the clock" and the period for compliance does not start until the date of the appeal decision. Accordingly, the appellant will have six months from the date of this decision to comply with the requirement.

20. Given the relatively straightforward nature of the construction and the works involved, and in the absence of substantive evidence regarding the availability of contractors, I consider the period of six months is reasonable and proportionate. The appeal on ground (g) therefore fails.

Conclusion

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

Felicity Thompson

INSPECTOR