



Appeal Decision

Site visit made on 26 November 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09th December 2024

Appeal Ref: APP/G3110/C/23/3328774

The land at 13 Iffley Turn, Oxford, Oxfordshire, OX4 4HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Ms Zoe Soltani against an enforcement notice issued by Oxford City Council.
- The notice was issued on 4 August 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a wall along the southern boundary of the Land, as shown edged in green on the plan, being in excess of 1 metre height and adjacent to a public highway.
- The requirements of the notice are: (i) Dismantle or demolish the boundary wall along the southern boundary of the Land as shown edged in green on the plan attached, and (ii) Remove the resulting materials and rubble arising from compliance with (i) from the Land.
- The periods for compliance with the requirements are: 3 and 4 months from the date the notice takes effect in relation to Steps (i) and (ii) respectively.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f), and (g) of the Act. 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.

Summary of Decision: The appeal is allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Preliminary Matter

1. The submission of a planning application and an appeal under ground (a) do not mean the appeal under legal grounds is without merit. Each ground of appeal is contested and considered without prejudice to the other grounds.

Ground (b)

2. To succeed under this ground the appellant needs to show that the alleged breach of planning control has not occurred, as a matter of fact.
3. The notice refers to a single wall erected in the position shown by green lines on a plan attached to the notice. It is the appellant's case that a series of walls have been erected, not a single wall.
4. There are very small gaps between different sections of wall to the east of the vehicular entrance to the site. That entrance is secured by a gate between piers, and is alongside a pedestrian entrance to the site, which is also secured by a gate between piers. Short sections of wall run between piers to each gate and from a pedestrian gate pier to the southern flank elevation of an outbuilding (referred to as a garage). Another wall then runs along the remaining extent of the southern boundary and up part of the eastern boundary.

5. The evidence shows that works on the boundary treatment took place during the summer of 2019, with 3 sections claimed to have been erected separately, at different times. Those works were consistent with each other and for the same purpose of securing the southern boundaries of the site. It is therefore clear that these sections were erected as a single building operation (despite undetailed claims to the contrary in statutory declarations (SDs)), over a short period.
6. Notwithstanding the fact that they were erected in separate sections, and that parts are separated by gaps (some very small, others quite large and secured by gates), it is clear that two walls have in fact been erected. One of those walls runs along the southern boundary to the west of the garage flank wall (the SW wall); the other runs along the southern boundary and part of the eastern boundary, to the east of the garage flank wall (the SE wall). These walls are in the positions of the green lines on the plan attached to the notice.
7. The alleged breach of planning control is therefore incorrect and has not taken place. However, I have wide powers under section 176(1) of the Act to correct any defect, error or misdescription in the notice if I am satisfied that doing so will not cause injustice. It is clear from the notice as a whole that the walls in the positions of the green lines are the alleged breach of planning control. I am therefore satisfied that correcting the notice to ensure paragraphs 3 and 5 refer to those two walls, rather than a single wall, would not cause injustice.
8. The appeal under ground (b) succeeds insofar as I shall correct the notice as set out above.

Ground (c)

9. To succeed under this ground the appellant needs to show, on the balance of probabilities, that the walls do not constitute a breach of planning control.
10. It is not disputed that the walls comprise development requiring planning permission. Planning permission is granted under the provisions of Article 3(1) and Class A of Part 2, Schedule 2 of the GPDO¹ for the erection, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, subject to limitations. Limitation A.1(a)(ii) states that such development is not permitted if 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 (m) above ground level. There is no dispute that the walls exceed 1m in height.
11. Both walls have parts which are indisputably adjacent to a highway used by vehicular traffic (Iffley Turn) on account of their proximity to the metalled part of that road. There are narrow strips of planting between the walls and the footpath which adjoins the vehicular carriageway. However, there is insufficient separation between the walls and the metalled part of the road to suggest they are not adjacent to each other, applying a reasonable understanding of the term 'adjacent'.
12. Iffley Turn bends away from part of the SW wall to join a roundabout, creating an intervening grassed verge with trees and a bench. At that point, part of the SW wall may not be described as adjacent to a highway used by vehicular traffic. I have already found that the SW wall is a single wall erected as part of

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

a single building operation. Therefore, as other parts of the same wall are adjacent to a highway used by vehicular traffic, the whole of the SW wall fails to accord with limitation A.1(a)(ii). This is the same for the SE wall, where a relatively small part of it stretches away from the highway.

13. It is not the case that limitation A.1(c) of Class A allows boundary treatment to be replaced so long as its former height is not exceeded. Former boundary walls at the site were demolished, which did not comprise development requiring planning permission under the provisions of section 55(2)(g) of the Act and The Town and Country Planning (Demolition - Description of Buildings) Direction 2014², even if footings relating to those walls remain in place. Therefore, aside from whether the walls are the same heights as any former walls, the former walls were not altered in accordance with Class A. They were simply demolished without the need for planning permission.
14. For the above reasons, the walls do not benefit from any planning permission granted by the GPDO. I have not been referred to any other planning permissions the walls may benefit from. They are therefore in breach of planning control.
15. The appeal under ground (c) must fail.

Ground (d)

16. To succeed under this ground of appeal the appellant needs to demonstrate that, at the date when the notice was issued, no enforcement action could be taken in respect of the walls. With regard to sections 171B (as it was when the development was carried out) and 191(2)(a) of the Act, the development needs to have been substantially complete on or before 4 August 2019 to be lawful. The standard of proof is the civil standard, which is the 'balance of probabilities' or whether something is more likely than not.
17. It is the appellant's case, supported by SDs and dated photographs, that the walls were substantially complete by 26 July 2019. The Council has no evidence to dispute this and first became aware of the walls on 9 December 2019.
18. There are SDs signed in the presence of a solicitor by: Shabir Dogar (a plumber who worked at the site in 2019), Chaudhary Ali (the main contractor for building the walls), Schehereazade J Soltani (occupant of the site and daughter of the appellant), and Shahrazad Shikholeslami, Lois Ilbery, Stephen Patrick, and Stephen Heaver (visitors to the site). Statements by Kate and Jay Williams (visitors to the site) purport to be SDs, but as they have not been signed in the presence of a person authorised to administer oaths, they do not have the same implications or carry the same weight as SDs.
19. The SDs and signed statements from visitors to the site lack detail to explain the circumstances or dates of their visits. They do not explain the reasons for their visits, or the relationships between the signatories and the appellant or the owners/occupants of the site. As such, I assign them little weight.
20. Mr Dogar and Mr Ali, however, were contractors working at the site at the times the walls were erected, and they have both provided dated photographs, which include parts of the walls in the background. There are serious criminal

² Subsequently replaced by The Town and Country Planning (Demolition - Description of Buildings) Direction 2021

sanctions where a false statement is made in a SD and there is no evidence to suggest Mr Dogar or Mr Ali are friends of the appellant or owners/occupants of the site. Moreover, there are no reasons for me to treat their SDs any more cautiously than normal.

21. Mr Ali, who was responsible for carrying out the works, is unequivocal in confirming the walls between 11 and 15 Iffley Turn were complete on 26 July 2019. Mr Dogar and Ms Soltani confirm the same. This aligns with a quotation for the works, dated 10 June 2019, which refers to the frontage needing to be finished by 26 July 2019 otherwise penalties would be incurred. It specifies that twelve people would carry out the work.
22. There is some ambiguity in the quotation in that it refers to a fourth part of the boundary treatment to be completed at an unspecified later time, described as 'NE and E facing back of property'. While this may refer to part of the SE wall, it may not. It does not significantly undermine the appellant's case or make their claims any less likely.
23. The quotation also states 'decorative and to be done later date when house near completion, agreed with client', in reference to the tile creasing and engineering capping costs. This tallies with the appellant's statement of case, which explains that the walls were largely complete ahead of schedule, save for pier and decorative finishes, on 19 July 2019. I take this to refer to the tile creasing and engineering brick capping on top of the walls and piers, which is absent in Mr Ali's photograph of part of the SW wall on 19 July 2019. Such finishes could have been completed between 19 and 26 July 2019, especially if there were 12 people still working on the walls. There is no evidence which makes this unlikely.
24. The dated photographs attached to the SDs of Mr Dogar and Mr Ali only show small sections of the walls, but it is clear that significant works had been undertaken on at least parts of the walls by those dates: 5 July 2019, 12 July 2019, 19 July 2019, and 24 July 2019. All of this is consistent with Mr Ali's photograph dated 12 June 2019 showing the distinct brickwork on-site.
25. The appellant themselves has referred to previous application forms stating the walls were completed in December 2019, which are claimed to be down to errors by previous agents. This is a reasonable explanation which is not disputed by the Council, and there is no evidence to suggest it is untrue.
26. The Council states that it opened an enforcement investigation on the same day it was made aware that an unauthorised wall was under construction, on 9 December 2019. This is not supported by any evidence that the SW wall or the SE wall were under construction on that date, or that the Council received anything more than an unsubstantiated allegation on that date. I have not been provided with evidence that any works were undertaken to the walls after 4 August 2019, or that they were not substantially complete before then.
27. Case law³ directs me to accept the appellant's version of events if there is no evidence to contradict it or make it less than probable, provided it is supported by evidence which is sufficiently precise and unambiguous. Overall, the appellant's evidence is sufficiently precise and unambiguous to show, on the balance of probabilities, that the walls were substantially complete before

³ *Gabbittas v SSE & Newham LBC* [1985] JPL 630

4 August 2019. There is no evidence to contradict the SDs and explanations in the appellant's statement of case, which are supported by dated photographs and a detailed quotation dated shortly before works commenced.

28. The appeal under ground (d) therefore succeeds.

Conclusion

29. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect. The appeal succeeds on ground (b) to that extent. On the balance of probabilities, the appeal on ground (d) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (a), (f), and (g), and the application for planning permission deemed to have been made under section 177(5) of the Act do not need to be considered.

Formal Decision

30. It is directed that the enforcement notice is corrected by:

- Deletion of the text 'a wall' at paragraph 3 of the enforcement notice and its substitution for the text 'two walls'; and
- Deletion of the text 'wall' at paragraph 5 of the enforcement notice and its substitution for the text 'walls'.

31. Subject to the corrections, the appeal is allowed and the enforcement notice is quashed.

L Douglas

INSPECTOR