



Appeal Decisions

Site visit made on 17 December 2024

by Thomas Shields DipURP, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2025

Appeal A Ref: APP/C1950/C/23/3315172

Appeal B Ref: APP/C1950/C/23/3315173

4 The Chase, Welwyn, AL6 0QT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act"). The appeals are made by Mr Jayesh Patel (Appeal A) and Mrs Sangita Patel (Appeal B) against an enforcement notice issued by Welwyn Hatfield Council.
 - The notice was issued on 20 January 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a detached outbuilding and associated engineering operations involving raising the level of the land and the construction of a retaining wall topped by a timber fence that has taken place within the last four years.
 - The requirements of the notice are:
 - (i) Demolish and remove the detached outbuilding as shown in the approximate position outlined and crosshatched in blue on the attached plan.
 - (ii) Demolish and remove the unauthorised retaining wall, including the gravel boards.
 - (iii) Take down and remove the unauthorised boundary fence to the rear, including the posts.
 - (iv) Restore the land to its previous ground level and condition prior to the commencement of the unauthorised development.
 - (v) Remove from the land all materials, debris, waste, plant and equipment associated with requirement (i) to (iv) above.
 - The period for compliance with the requirements is: 4 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) 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. Appeal B proceeds on ground (f) only.
-

Decision

1. The appeals are 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 Act.

Preliminary Matter

2. Former policies D1 and D2 of the Welwyn Hatfield District Plan (2005) have since been replaced by Policy SP9 following the adoption of the Welwyn Hatfield Borough Council Local Plan in October 2023. However, there is no change in substance between policies D1, D2 and current Policy SP9, which, amongst other matters, seeks to ensure that all new development is of high quality design, and which relates well to the context of the area in terms of height, mass and scale.

Background

3. No. 4 The Chase is a two storey dwellinghouse with its rear garden boundary following the curve of a bend in the road. Along with a number of properties nearby the land levels fall away to the rear. No appeal has been made on ground (b), hence there is no dispute that the alleged development in the notice has occurred. This comprises the raising up of the land to the rear to level off the garden,

construction of a boundary retaining wall and timber boundary fencing, and the erection of an outbuilding.

Ground (a)/deemed application for planning permission

Main Issue

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

Reasons

5. The character of the area in this small residential close is in part formed from the mainly open plan layout of front gardens with grass verges alongside the carriageway.
6. Contrary to the appellant's view I find that the significant height of the boundary fencing and the outbuilding, the rear of which also forms part of the boundary, are together greatly out of scale and have a substantially dominating effect on the street scene, harmful to the character and appearance of the area I have described, and in conflict with the requirements of Policy SP9.
7. I do appreciate that No.4, unlike other properties in the close, has its side and rear garden boundary running alongside the road frontage following the fall in road level. Consequently achieving land levels within the rear garden area that would be useful for normal domestic activities and securing reasonable levels of privacy is more difficult. However, the development that has been carried out is not the only solution. In this regard, for example, I note that other properties that have a single rear boundary onto the road frontage have "stepped down" levels to the rear of their properties, such that nearest the roadside their boundaries and outbuildings do not appear out of scale or overly dominant in the context of the street scene.
8. In terms of materials and colours, taken in isolation, the outbuilding, fencing and retaining wall are commonly found features in residential areas and hence are not unacceptable in that single regard. However, due to the artificially raised height of these features above former ground levels the development overall is unacceptable for the reasons I have set out above. While planning conditions are capable of being imposed for colours and finishing, they would not overcome this harm.
9. For all these reasons the appeal on ground (a) fails.

Ground (f)

10. Within section 173(4) of the Act there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (a) is to remedy the breach of planning control which has occurred. The second (b) is to remedy any injury to amenity which has been caused by the breach.
11. In this regard the notice requires the removal of all of the development that has been carried out, effectively to restore the land to its former condition prior to the breach taking place. It is clear therefore that the purpose of the notice is to fully remedy the breach of planning control within s173(4)(a).
12. The appellant argues that brick or timber cladding could be added to the surface of the boundary fencing gravel boards and the retaining wall, with dark stain to the

fencing. Also, as an alternative measure, that the outbuilding could be moved further into the garden behind additional boundary fencing.

13. However, as I set out in ground (a) earlier, applying treatments to the surfaces as described would not overcome the harm resulting from the out of scale and dominating effect of the development on the character and appearance of the street scene. Also, while the outbuilding might be suitable for future use within the garden in a different overall scheme design, that would be a separate future matter for negotiation between the appellant and the Council. Currently the notice requires the land level, including beneath the outbuilding, to be restored and so the building will need to be removed from its current position in any event in order to comply with the notice requirements.
14. Moreover, this ground (f) appeal is only concerned with whether the requirements of the notice exceed what is necessary to remedy the breach. As such, the requirements to remove the built development and restore the land to its former condition cannot be excessive, because they go no further than remedying the breach. Any lesser requirements, such as those suggested by the appellant, would not fully remedy the breach of planning control.
15. The appeal on ground (f) therefore fails.

Thomas Shields

INSPECTOR