



Appeal Decision

Site visit made on 28 January 2025

by **Peter Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 March 2025

Appeal Ref: APP/K2420/C/23/3317485

**Land north of Lindley Wood, Fenn Lanes, Fenny Drayton, Leicestershire
CV13 6BJ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Shaan Chaudry against an enforcement notice issued by Hinckley and Bosworth Borough Council.
 - The notice was issued on 26 January 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the construction of a wall.
 - The requirements of the notice are to remove the wall in its entirety, remove the resulting debris from the Land and restore the Land to its condition before the breach took place.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (e) and (f) 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. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the construction of a wall as shown on the plan and photograph attached to the notice.

Ground (e)

Background

2. Appeals on ground (e) are concerned with whether copies of the enforcement notice were served as required by section 172 of the Act. Section 172 requires a copy of the enforcement notice to be served on the owner and on the occupier of the land to which it relates not less than twenty-eight days before the date when it is to take effect.
3. The appellant says that neither the owner nor the occupier were served as required by s172. I am also told that the appellant was not aware of the notice until around 9 days before it was due to take effect, meaning there was only limited time available to submit an appeal or to engage with the Council to seek a resolution.
4. The Council has provided a witness statement from an enforcement officer stating the following:
 - On 31 January 2023 she affixed the enforcement notice to a metal bracket on the wall.

- On the same day, the notice was posted by recorded delivery to the appellant.
5. A copy of the receipt for the recorded delivery is attached to the statement and provides compelling evidence that a copy of the notice was served on the appellant on the date stated. Also attached is a photograph of a document, apparently the enforcement notice, affixed to the wall. The witness statement includes a copy of the notice, complete with the explanatory note.

Whether the notice was served on the owner

6. The appellant says that the owner of the site is MAC Developments Ltd. The notice was not served on that company but was served on the appellant whom, it appears, the Council understood to be the owner. In support of this, the Council has provided a planning application form dated 27 January 2022, a year before the notice was issued. The application relates to this site and the current appellant is named as the applicant. Certificate A has been filled in, indicating that, 21 days before the application, nobody other than the applicant owned any part of the site.
7. The appellant has not indicated that there has been a change of ownership since that time or given any other explanation for the Council's evidence. Nor is there any evidence to support the claim that MAC Developments now own the site. No details of that company have been provided, but the delegated officer report for a planning application for fencing on adjacent land¹ identifies the applicant as 'Mr S Chaudry of MAC Developments & Construction LTD', which suggests that there is a link between the similarly-named 'MAC Developments Ltd' and Mr Chaudry.
8. Looking at the evidence as a whole, it appears to me, on the balance of probability, that the notice was served on the owner of the land. But even if MAC Developments is the owner, the apparent link between that company and Mr Chaudry suggests that there has not been substantial prejudice.

Whether the notice was served on the occupier

9. The appellant says that the site is occupied by Crown Waste Management Ltd. However, there were no obvious signs of such occupation when I visited the site and the appellant has not provided documentary evidence in support of the claim. Although I understand that the company was served in respect of a different enforcement notice, that related to a different site and it does not follow that the company also occupies the land targeted by this notice.
10. Moreover, section 329(2)(b)(ii) indicates that, where the notice or document is required or authorised to be served on any person as an occupier of premises, the notice or document shall be taken to be duly served if it is appropriately addressed and marked and '*it is delivered to some person on those premises, or is affixed conspicuously to some object on those premises*'. In this case it appears that the notice was affixed to the wall, along those lines.
11. The photograph appended to the Council's witness statement is not date-stamped, and so does not, in itself, establish when the notice was fixed to the wall. I am told that efforts have been made to get a date-stamped version of the photograph from the Council but without response.

¹ Ref 22/00079/FUL

12. Nevertheless, there is no specific evidence to undermine the claim of the enforcement officer that the notice, as appended to the witness statement, was fixed in place on 31 January 2023. I am told that 'a local resident had witnessed something being attached to the wall on 16th February', but I cannot assume that this was the enforcement notice, and I attach more weight to the first-hand, written evidence of the enforcement officer.
13. Even if the notice was not correctly served, section 176(5) of the Act states '*Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him*'.
14. Here, there is no claim that any occupier of the site has been deprived of the opportunity to appeal or otherwise prejudiced. It also appears from the appellant's evidence that a director of Crown Waste Management Ltd was aware of the notice at around the same time as the appellant.

Conclusion on ground (e)

15. I conclude, on the balance of probability, that the notice was correctly served. Even if I am wrong on that, it does not appear to me that any person has been substantially prejudiced by any shortcomings. The appellant refers to the case of *Porritt & Williams v SSE & Bromley LBC [1988] JPL 414*, but that does not establish any principles that would lead me to any different conclusion in the very different circumstances of this case. Accordingly, I conclude that the appeal on ground (e) should fail.

Ground (a)

Main issue

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

Reasons

17. The wall has been built to either side of a track which serves as a vehicular access from Fenn Lanes. It has clearly been designed with the intention of supporting gates, hinge supports having been installed in the brickwork. The wall is built of red brick, with some blue brick detailing. The wall is about 2m in height and incorporates substantial piers. The site is within the gently rolling landscape of the Sence Lowlands area, as defined by the Council's 2017 Landscape Character Assessment.
18. The Council has not elaborated beyond the brief reasons given for issuing the enforcement notice in the notice itself. I am told that its case is covered in a committee report that is appended to its statement, but that report relates to an entirely different proposal for fencing elsewhere and is of little relevance. I have also been provided with an officer report relating to a planning application for a similar wall, complete with gates, on this site, but the report recommended approval of the scheme and does not provide any reasons to withhold permission.²

² 22/00078/FUL

19. However, I have been referred to a subsequent appeal decision relating to that scheme³. The appeal was against the Council's failure to determine the planning application, and the inspector dismissed the appeal due to concerns about the appearance of the proposed wall. Although the wall was apparently different in some respects to the wall now targeted by the enforcement notice, that appeal decision is nevertheless an important material consideration, and I am mindful of the importance of consistency in appeal decisions. I do not have details of the wall considered by that inspector, but understand that it was somewhat lower than the wall now built, and that the wall now includes piers not previously proposed. The inspector referred to its 'elaborate brick detailing', but I do not know how it compared to the detailing of the wall now built.
20. The inspector's concerns were that the wall would appear incongruous in this rural setting, resulting in a domesticated and urban appearance. The fact that the wall would not be attached to any other structure would make it appear isolated, adding to the harm.
21. The height of the wall now before me, complete with its piers, is such that it has a scale and substance which appear appropriate in this setting, rather than anything of a more domestic scale. The detailing is traditional in nature and not unduly fussy or of a domestic character. As with the scheme considered by my colleague, this wall has a degree of isolation, in the sense that it is not attached to other structures. It is, however, seen against a backdrop of trees on the approach from the main road, such that it does not jut out against the skyline. The brickwork had already started to weather when I saw the wall, and that will no doubt continue over time, such that its initial brashness will fade. Consequently, I do not consider that it appears unduly incongruous in this rural setting. While my colleague was concerned about the appearance of the gates previously proposed, the enforcement notice relates solely to the wall.
22. Furthermore, the appellant has raised the prospect that if this wall were removed it could be replaced by something lower in height using permitted development rights. No specific details of this have been provided, but I agree, and the Council does not dispute, that a replacement wall not exceeding 1m in height could be built in the same location utilising permitted development rights set out at Class A of Part 2 of Schedule 2 to *The Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended). Since there is a real prospect that this could occur, this 'fallback position' is a material consideration.
23. There is little before me to establish the actual likelihood of such permitted development rights being used, which limits the weight I attach to this consideration. Nevertheless, it might be that even a 1m high wall would meet the appellant's needs and so I cannot rule it out as a possibility. I have some concern that a low wall would have a more domestic appearance, which would look out of place in this setting and thereby cause a degree of visual harm. Consequently, the fallback argument raised by the appellant weighs, to a small degree, in favour of the development before me. There is no indication that this matter was raised in the previous appeal and it did not form part of the inspector's reasoning.
24. Viewing the case as a whole, I conclude that the wall constructed on the site does not give rise to visual harm. Consequently, I find no conflict with policies DM4 and

³ APP/K2420/W/22/3304167

DM10 of the Council's *Site Allocations and Development Management Policies DPD*, which seek to protect the character of the countryside and ensure good design.

25. Other matters raised by interested parties include the concern that access will be restricted. However, while the wall has clearly been designed with the intention of adding gates, the gates are not part of the development before me and it could remain as it is without gates. In any event, I agree with the previous inspector that that would be a civil matter and is not a reason to withhold planning permission. I have had regard to all other matters raised, including the fact that the development was carried out without planning permission, but none leads me to any different conclusion.

Conclusion

26. For the reasons given above, the appeal succeeds on ground (a). I shall grant planning permission for the operations described in the notice. The enforcement notice will be quashed. In these circumstances, the appeal on ground (f) does not fall to be considered. No planning conditions have been suggested and none are necessary in my view.

Peter Willows

INSPECTOR