



Appeal Decision

Site visit made on 4 March 2025

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 8 APRIL 2025

Appeal Ref: APP/T0355/C/23/3329755

193 Coppermill Road, Wraysbury, Staines, TW19 5NW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mrs Sonia Sandhu against an enforcement notice issued by Royal Borough of Windsor and Maidenhead.
 - The notice was issued on 17 August 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a front boundary wall with associated piers, and gate in the approximate position marked with a blue line on the attached plan.
 - The requirements of the notice are to: 1) Remove the gate and demolish the brick wall and associated piers, (which runs parallel to the edge of the highway), in their entirety; 2) Remove from the land all building materials and rubble following compliance with step (1).
 - The period for compliance with the requirement is: 14 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) 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. It is directed that the enforcement notice is varied by:
 - In paragraph 4 deletion of the words from 'i.' to 'entirety' and substitution with the words:

'i. Either (a) Remove the gate and demolish the brick wall and associated piers (which run parallel to the edge of the highway) in their entirety; OR (b) Remove the gate and reduce the height of the brick wall and associated piers (which run parallel to the edge of the highway) to no more than 1 metre above ground level; and'
 - In paragraph 5 the deletion of the words '14 days' and substitution with the words 'one (1) month'.
2. Subject to the variations, 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. Both main parties were given an opportunity for comment in respect of the 'hidden' ground (f) appeal identified within appeal representations. Representations made have been taken into consideration.
4. The revised National Planning Policy Framework 2024 ('Revised Framework') came into force during the course of the appeal. The parties were given an

opportunity to comment on this as regards the ground (a) appeal and submissions made have been considered.

The appeal on ground (c)

5. The appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The onus is on the appellant to make their case on the balance of probability.
6. Pursuant to s191(2) of the 1990 Act¹ development is lawful if: (a) no enforcement action can be taken in respect of it (whether because it did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) it does not constitute a contravention of any of the requirements of any enforcement notice in force.
7. Under this ground, the appellant indicates that the breach of planning control has already been remedied on the basis that the walling (which was over 1 metre in height when constructed) has been reduced in height to 1 metre² since the date of the notice. The appellant therefore effectively seems to argue that deemed planning permission is granted in respect of the reduced height wall pursuant to permitted development ('PD') rights³. There is no indication though that the gate has been/could feasibly be reduced in height.
8. Under Class A the erection of a gate or wall constructed '*adjacent to a highway used by vehicular traffic*' is PD unless it exceeds 1 metre above ground level. For enclosures which are not adjacent to a highway, the height limit is 2 metres. The appellant has submitted a photograph showing the gate to be some 3.3m from the highway. I share the view of the Council though that 'adjacent' to the highway does not mean directly abutting it. While the appeal development is not contiguous with a highway, it is immediately adjacent to the publicly owned pavement, forming a boundary between the appellant's private land and this public path. I therefore find as a matter of fact and degree that the appeal development is adjacent to a highway used by vehicular traffic. The 1m height limit accordingly applies meaning that the development attacked by the notice represents a breach of planning control.
9. As regards submissions that the walling has been reduced in height, the development should be considered as a whole and so if part of this does not benefit from PD rights (e.g. the gate), the whole development is unlawful. PD rights also do not operate retrospectively and so if a wall is erected in breach of Class A height limitations but later is reduced in height, it will not become PD at that later date. The ground (c) appeal accordingly fails.

The appeal on ground (a) and the deemed planning application (DPA)

Main Issues

10. The site is located within the Metropolitan Green Belt and the main issues are:

¹ Town and Country Planning Act 1990

² This measurement has not been verified

³ Contained in the Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 2, Class A ('Class A')

- Whether the appeal development represents inappropriate development in the Green Belt having regard to the Revised Framework and relevant development plan policies;
- The effect of the appeal development on the openness and purposes of the Green Belt;
- The effect of the appeal development on the character and appearance of the area and on highway safety; and
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the appeal development.

Reasons

Whether or not inappropriate development

'Part of the matters'

11. The DPA relates to the appeal development as at the date of the notice ('the Appeal Development'). Measurements from the Council at this time identified the piers as some 1.9m high, the associated walling as around 1.6m and the gate as some 1.5m high.
12. Pursuant to s177(1) of the 1990 Act, I can grant planning permission in respect of the whole of the matters constituting the breach of planning control or for 'part of the matters' enforced against. Granting planning permission in respect of a wall and/or piers reduced to 1m in height would plainly be in respect of 'part of the matters'. The nature of construction of the gate means that this likely cannot be reduced in height and a replacement gate would not constitute 'part of the matters' enforced against. As such, a lower height gate is not included within the alternative scheme to be assessed as 'part of the matters'.

Local and National Policy

13. The fundamental aim of Green Belt ('GB') policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of GBs then are their openness and their permanence. Inappropriate development is, by definition, harmful to the GB and should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the GB by reason of inappropriateness, and any other harm resulting from the appeal development, is clearly outweighed by other considerations.
14. Per paragraph 154 of the Revised Framework, development in the GB is inappropriate unless one of the specified exceptions applies. The Council contends that the development does not fall within any of these and represents inappropriate development. The appellant does not rely on any specific exception but argues that a 'modest' development of this type is not harmful to the GB. The appellant suggests that the development is 'proportionate' making reference to the paragraph 154(c) exception for the extension or alteration of a building provided that this does not result in disproportionate additions. Plainly though, the appeal development does not represent an extension/alteration as it is a stand-alone new structure.
15. Policy QP5 of the Borough Local Plan (2013-2033) ('BLP') reiterates national GB policy stating that the Metropolitan GB will be protected against inappropriate

development and that planning permission will not be granted for inappropriate development unless very special circumstances are demonstrated.

Analysis

16. The Appeal Development comprises front boundary enclosures in the form of brick walling and associated piers, along with a metal gate which features narrow spacing between metal sections. The appellant submits that the appeal development is a modest form of development which is not harmful to the GB. However, any form of development in the GB is inappropriate unless it falls within one of the specified exceptions. There is nothing indicating that any exceptions would be applicable.
17. I conclude then on the first main issue that the Appeal Development and alternative scheme both represent inappropriate development in the GB having regard to the Revised Framework and relevant development plan policies. They conflict with policy in both the BLP and Revised Framework as outlined. As stated in paragraph 153 of the Revised Framework, inappropriate development in the GB represents definitional harm which is due substantial weight.

Openness and purposes

18. The appeal site is located on a residential road within a relatively built up part of the GB. Properties along this road show a mix of front boundaries including a number of open frontages, some hedging, low walls along with some higher boundary treatments in the form of metal gates, brick walls and fencing. Existing open front boundaries, spacious front gardens, low front boundary treatments and greenery together with grass verges maintain a sense of spatial and visual openness.
19. The appellant highlights a number of other front boundary treatments of a similar height to those attacked by the notice. Whilst I noted these during my site inspection, they are not so prevalent as to mean that additional taller boundary enclosures have no harmful impact on openness. Rather, existing high front boundary enclosures demonstrate the harmful loss of openness resulting from these. In this context, the tall boundary enclosures comprised in the Appeal Development result in a harmful loss of openness; the design of the gate incorporating narrow spacing between metal sections does little to reduce its impact on openness. The lower height of the wall and piers per the alternative scheme also would still reduce openness, particularly due to the taller gate.
20. The Council has not identified any conflict related to the purposes of including land within the GB and I have no reason to take a different view. I find then on the second main issue that while the Appeal Development and alternative scheme do not conflict with GB purposes, both cause a loss to the openness of the GB. In the case of the Appeal Development, this is a modest loss, with a slightly lesser loss from the alternative scheme.

Character and appearance

21. I acknowledge that the appeal gate was selected to complement the dwelling's design. However, as outlined, the immediate area has a distinctly open character and, in this context, the scale of the Appeal Development represents a visually jarring addition. Reduced height walling and piers per the alternative scheme would reduce this harm albeit that the higher gate would still materially detract from

the established open character. Bearing in mind the location of the built development on the property's front boundary, this harmful effect is prominent in public views.

22. I conclude thus on the third main issue that the Appeal Development and alternative scheme result in harm to the character and appearance of the area. There is conflict then with Policy QP3 of the BLP which seeks to ensure that new development respects local character.

Highway safety

23. Matters concerning highway safety were not referenced in the notice but have been dealt with by the Council, appellant and interested parties in written representations. The Council submits that the Appeal Development results in potential harm to highway users since the gate is not setback from the highway meaning that vehicles need to wait in the road. Interested parties raise concerns that the height of the wall pillars causes a 'blind spot' for vehicles and pedestrians and 'especially to children on bikes', particularly when cars are parked on the curb side.
24. As to the Council's concerns, I accept that it might be preferable for the efficient operation of the highway network for the appeal gate to be set back to avoid vehicles waiting in the highway. However, bearing in mind that Coppermill Road has a relatively low speed limit, along with traffic calming speed bumps and does not appear to see high levels of traffic, there is no substantive evidence to suggest vehicles waiting in the highway for the appeal gate to open would result in highway safety harm. There is no evidence before me either of collisions or 'near misses' resulting from the use of other gates in similar positions along this road.
25. As to the concerns of a 'blind spot' resulting from the appeal wall, there is no evidence that similar arrangements on this road have resulted in any collisions in the past again given the relatively slow moving and moderate volume of traffic. The Appeal Development does not in my view then represent a material risk of highway safety harm since drivers would very likely slowly edge out of the driveway until full visibility is achieved. As regards the alternative scheme, this would improve upon the position in terms of visibility but would have no effect as to the situation regarding waiting vehicles pending the gate opening.
26. I find then that neither the Appeal Development nor the alternative scheme result in any highway safety harm. There is no harmful conflict with Policies QP3 or IF2 of the BLP in their aims of delivering easy and safe access and movement for pedestrians, cyclists, cars and service vehicles and to create a safe and comfortable environment for pedestrians and cyclists.

Other considerations

27. The appellant draws my attention to examples of other similar development in the immediate area and the perception of unfairness that these have not been enforced against. This offers no substantive weight in favour of the Appeal Development or alternative scheme as this is an argument that could be repeated too often undermining the policy protection afforded to the GB. Precedent does not arise from past developments since planning decisions fall to be made on their own individual merits.

28. Personal circumstances are cited related to a burglary suffered by the appellant's family in another property and understandable concern for privacy and appropriate security measures. These matters only offer modest weight in favour of the Appeal Development/alternative scheme since there is nothing to suggest that other measures would not also be effective without the resultant harm to the GB. Neutral effects such as in relation to biodiversity cannot positively support the development.
29. As outlined, the Council has acknowledged that pursuant to Class A PD rights, the appellant is permitted to construct walls/piers/gates up to 1m in height in the same location as the Appeal Development. Given the appellant's firm intention to erect a front boundary enclosure, there is a strong likelihood these PD rights would be exercised if planning permission is refused in this appeal.
30. This fallback offers only little weight in support of the Appeal Development since this would be materially more harmful than the fallback position in its effect on the character and appearance of the area and openness of the GB. It offers though moderate weight in favour of the alternative scheme since the alternative scheme would only be more harmful than the fallback by reason of the gate being higher.

Whether or not very special circumstances exist

31. The Appeal Development represents inappropriate development in the GB and results in material harm to openness. Substantial weight should be given to any harm to the GB and there are no other considerations significantly supporting the Appeal Development. Other considerations therefore do not clearly outweigh the totality of harm and so very special circumstances do not exist.
32. As to the alternative scheme, the available fallback position offers moderate weight in support of this. However, this would still result in definitional harm to the GB and by way of a loss of openness, which is due substantial weight. Again, other considerations cannot therefore clearly outweigh the totality of harm and thus very special circumstances do not exist.

Other Matters

33. Interested parties have raised concerns of localised flooding resulting from the Appeal Development. Given my findings on the main issues above, these have not led me to any different overall conclusion and I am mindful in any event that there is nothing to indicate that the exercise of Class A PD rights would result in any improvement in this situation. The appellant's concerns as to the Council's handling of enforcement action do not fall to be dealt with in this appeal.

Conclusion on ground (a) and the DPA

34. The Appeal Development and alternative scheme both represent inappropriate development in the GB and result in harm to openness and to the character and appearance of the area. They conflict with the development plan read as a whole and with national policy and do not represent the sustainable development in respect of which there is a presumption in favour. There are no material considerations leading to a decision other than in accordance with the development plan. The ground (a) appeal therefore fails and planning permission will be refused in respect of the Appeal Development and alternative scheme.

The 'hidden' appeal on ground (f)

35. This ground of appeal is that the requirements of the notice exceed what is necessary.
36. S.173 of the 1990 Act⁴ indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity caused by the breach. The fact that the notice requires demolition of the wall and piers and removal of the gate suggests that it is directed at remedying the breach of planning control. The reason for issue of the notice concerning the effect on the character and appearance of the area is also consistent with seeking to remedy injury to amenity. As such, the notice is directed at both purposes.
37. Varying the notice so that the gate is removed and the wall and piers are reduced in height to 1m would not remedy the breach; the wall and piers did not meet the Class A height limit when constructed and would not become PD when subsequently altered. The Council submits that 'planning permission cannot be granted under ground (f) alone, where any lesser steps would result in works remaining that itself would require planning permission, either by express or deemed permission'. However, varying the requirements to allow the wall and piers to be reduced in height rather than demolished would not represent granting planning permission for new works, but rather would represent underenforcement whereby the works remaining would be granted planning permission by virtue of the operation of s173(11) of the 1990 Act.
38. I am mindful also that the enforcement regime is remedial and not punitive. Given that the appellant would be permitted to construct a 1m high wall and piers following demolition of those attacked by the notice, it would serve no purpose to require these to be demolished rather than reduced in height and so the existing requirement is excessive. Varying the notice to permit the appellant to reduce these in height (whilst also removing the gate) would therefore represent an obvious alternative step that could be achieved with less cost and disruption.
39. The ground (f) appeal succeeds to this limited extent.

Time for compliance

40. While no appeal has been made on ground (g) that the time for compliance falls short of what is reasonable, I am empowered by s176(1) of the 1990 Act to vary the terms of the enforcement notice provided that this does not result in injustice.
41. The notice stipulates a 14 day compliance period for the demolition of the wall and piers, removal of the gate and clearing of any resultant debris. In my view, this includes works that the appellant may well wish to contract a tradesperson to complete bearing in mind also that the gate apparently is electrically operated. In my view, a period of one month would strike the right balance between bringing ongoing harm to an end and providing a reasonable period for compliance. This modest extension to the time for compliance would not result in any injustice.

⁴ Town and Country Planning Act 1990

Conclusion

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

V Bond

INSPECTOR