
Appeal Decision

Site visit made on 10 January 2025

by **Grahame J Kean BA (Hons) Solicitor MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 June 2025

Appeal Ref: APP/M4510/C/24/3341264

15 Brandling Park, Jesmond, Newcastle Upon Tyne NE2 4RR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Anthony Knox against an enforcement notice issued by Newcastle Upon Tyne City Council.
 - The notice was issued on 1 March 2024.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the partial demolition of the boundary treatment (building consisting of fence, plinth and gate) at the front of the Premises measuring greater than 1m in height.
Without planning permission, the carrying out of engineering operations involving the formation and laying out of a means of an access for a vehicle to the highway at the front boundary of the premises.
 - The requirements of the notice are to:
 - 5.1 Restore the land to its condition before the breach took place by taking the following actions:-
 - 5.2 Remove the two stone pillars from the front elevation of the boundary to the Premises, and
 - 5.3 Re-instate/or move the stone plinth to fill the openings to match the existing stone plinths to the same height, design, position and using materials to match materials that previously existed in the position as shown highlighted in red on the attached photograph at Appendix 1 and labelled REINSTATE PLINTH 01, and
 - 5.4 Re build a timber close boarded fence to the front boundary of the Premises to match the condition of the fence prior to it being demolished, rebuild to the same height, design, position and using materials to match materials that previously existed as shown edged in yellow on the attached photograph at Appendix 1 and labelled REINSTATE FENCE 02, and
 - 5.5 Re-instate the timber close boarded pedestrian access gate to the front of the Premises to match the condition of the gate prior to it being demolished, rebuild to the same height, design, position and using materials to match materials that previously existed as shown highlighted in green on the attached photograph at Appendix 1 and labelled REINSTATE GATE 03, and
 - 5.6 Remove from the Premises all waste, materials, equipment and debris including that arising from compliance with the above steps.OR
 - 5.7 Implement and carry out the development of the front boundary treatment of the Premises in accordance with Condition 2 of the planning permission reference 2021/2005/01/HOU and approved plan, Proposed 01 HJSJ04 Rev 03.OR
 - 5.8 Install the metal railings on the inside of the two stone pillars to a width of 0.45 m on each side (set into the corresponding 0.28m stone plinth) as shown on the approved plan, Proposed 01 HJSJ04 Rev 03.The approved plan; Proposed 01- Drawing Number: HJSJ04 Rev 3 (Received 29/03/2022) is attached at Appendix 2 to this Enforcement Notice
 - The period for compliance with the requirements is: 4 (FOUR) MONTHS after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) 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 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.

Applications for costs

2. An application for costs was made by Mr Anthony Knox against Newcastle Upon Tyne City Council. This application is the subject of a separate decision.

Ground (b)

3. The appellant states that there have been no engineering operations as alleged in the description of the breach of planning control set out in the notice and no works for the formation and laying out of an access. His case is that nothing has changed to the pavement, kerb, road or parallel parking bays and all works have been within the curtilage of the dwelling.
4. Other comments are made under this ground which are considered below for ground (c). However, as far as concerns the point about where the works took place, an appeal on ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The evidence clearly shows that a means of an access for a vehicle to the highway has been formed and laid out at the front boundary of the premises. Vehicle crossovers often involve works to the highway but it is irrelevant to the allegation of fact that no works were undertaken outside the appellant's property boundary.
5. Demolition of buildings and other structures falls within the definition of "development" for planning purposes. The definition of a "building" in s336 includes any structure or erection. This would include the boundary treatment which has been demolished and re-altered by the appellant. The demolition works have provided access to the highway and are capable of being engineering operations. As the appellant's agent should be aware, the formation or laying out of a means of access to highways is explicitly defined as an engineering operation under s336 of the 1990 Act.
6. The appeal on this ground fails.

Ground (c)

7. The appellant correctly identifies that planning permission has been granted under ref 2021/2005/01/HOU. He claims that what is in situ is approved under this permission.
8. I disagree. Permission 2021/2005/01/HOU, granted in April 2022, was for the erection of wrought iron railings on top of existing stone plinth, wrought iron gate and stone pillar (max height 1.75m) to front boundary following part-demolition of previous boundary treatment. This was a permission for an amended scheme. If it was going to be fully and properly implemented it needed to comply with condition 2, ie the approved plan which in essence required reinstatement of a continuous boundary treatment the effect of which, among other things, would prevent vehicular access to the highway.

9. The Council notified the appellant in May 2022 that what was then in situ was a breach of planning control as the boundary was partially demolished in a conservation area without the owner having planning permission at the time that the work took place. Clearly, the vehicular access also existed at that time as there was still a car parked within the garden land at the property.
10. So, whatever permission is extant that refers to individual components of the boundary treatment such as pillars, railings and plinths, permission ref 2021/2005/01/HOU has not been fully implemented. The appellant's own photograph in his statement demonstrates this. To argue that site shown in the image complies with the approved drawings but is "*simply incomplete*" and he is "*already undertaking*" the work required to conform with the permission, is simply disingenuous. When I visited the site, the vehicular access was still there, and a vehicle was still parked in the front garden.
11. The appeal site is in a conservation area (CA), the Brandling Village CA. Partial demolition of a boundary treatment is considered "relevant demolition" under the 1990 Act, and therefore not permitted development. Condition C.1 in Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) states that development is not permitted by Class C if the demolition is "relevant demolition" for the purposes of section 196D of the 1990 Act (demolition of an unlisted etc building in a conservation area).
12. In this case, the Council is correct in stating that the frontage boundary treatment was originally over 1m in height and adjacent to the highway, therefore the demolition amounted to "relevant demolition" for the purposes of section 196D.
13. Placing a vehicle in the front curtilage of a residential property, as the appellant points out, may be incidental to the use of the dwelling, but whilst such a use would not require planning permission, any operational development necessary to avail oneself of such a use, generally does, as here, require permission.
14. The approved scheme Ref 2021/2005/01/HOU does not include a vehicular access and is therefore inherently different to that in situ. The appellant must be well aware of this and his agent's case under this ground of appeal amounts to an exercise in pure casuistry.
15. As the development in situ requires planning permission and does not comply with any planning permission granted in respect of the premises the Council has correctly identified that a breach of planning control has taken place. The appeal on this ground therefore fails.

Ground (a)

16. The main issue here is the effect of the development on the character and appearance of the area including in particular the Brandling Village CA.
17. Policy CS15 of the Core Strategy and Urban Core Plan 2010-2030 (CS) and Policies DM15, DM16 and DM20 of the Council's Development and Allocations Plan (DAP) are key to this issue. Policy CS15 and Policy DM20 seek high quality design in all development including taking a comprehensive and co-ordinated approach to development.
18. Policy DM15 seeks development in a CA that retains the significance of that area, permitting demolition of unlisted buildings only if they make little or no contribution

to the character or appearance of the CA. Policy DM16 seeks development that conserves or enhance the significance of the CA, its setting and surrounding key views, whilst considering the degree of permanence of any impact.

19. The appellant re-states that there is an extant permission for the pillars, railing and plinths in situ by virtue of permission ref 2021/2005/01/HOU. This is incorrect for the reason stated above. Properly implemented, it would represent a legitimate fall-back position which is why the Council has provided for its implementation as an alternative requirement in the notice.
20. The pre-existing boundary treatment, reading across the frontage from left to right, included a close boarded timber fence with a stone plinth, and a pedestrian gate of similar material to the fence. By December 2020 the fence and a section of stone plinth in the centre had been removed, two stone pillars greater than 1m in height had been erected and gravel hardstanding laid to facilitate the vehicular use of the new access.
21. Recognising that the use of a plinth with railings above was more in-keeping with the character of the CA, and that the revised proposal to replace the existing boundary treatment would be an improvement from the existing timber board fence, the Council granted the permission ref 2021/2005/01/HOU because it saw the proposal as improving the visual amenity of the property and the CA and enhance its significance. I see no reason to disagree.
22. However, when permission was granted the Council made it abundantly clear (see officer's report) that establishing a precedent of off-street parking within Brandling Park was considered inappropriate as set out in the supporting documentation for the CA, since the front amenity spaces were undeveloped and consisted of garden space. It stated, and from what I have read and seen I agree, that maintaining the undeveloped nature of the front amenity spaces preserves the continuity and appearance of the terrace and the character of the CA.
23. The deemed application relates not only to the creation of the vehicular access but also to the current state of the boundary treatment at the property. They are both sides of the same coin in a way because the supposedly unfinished state of the boundary treatment now in situ provides the gap to maintain vehicular access.
24. The appellant claims he is still engaged upon completing the work but the reality appears to be somewhat different. On complaint being made that the development was not in accordance with the permission, the appellant was requested to set out a timetable for undertaking the works to comply with the approved plans. It is now more than three years after permission was granted but the development is still not complete and there is still a vehicular access.
25. Since s177(1) of the 1990 Act only allows for a grant of permission for the whole or part of the matters alleged, it can be inferred that permission cannot be granted for more than the allegedly partially constructed structure. I strongly suspect that the appellant desires nothing more than to preserve the status quo, that is to maintain the vehicular access. However, the ground (a) appeal must still be determined on its merits. Consideration should be given to whether the unfinished development is so objectionable that it must be removed.
26. Planning permission is not generally granted for structures that are incomplete. If not carried out fully in accordance with the permission, the whole operation is

unlawful. There is nothing untoward in the Council as a local planning authority in issuing an enforcement notice in respect of unauthorised development that is not finished.

27. As far as concerns the vehicular access another example of the appellant's (or agent's) casuistry is found in his assertion that because the on-street car parking bays remain publicly accessible this makes permanent vehicular access to his property impossible. The lie is given to this assertion by the fact that a vehicle has been stationed in the front garden area now for some considerable time, made physically possible by the appellant's failure to complete the permitted development, whether deliberate or not.
28. The significance of the heritage asset which is the Brandling Village CA lies partly in the matters described in the Council's statement referring to the Brandling Park properties having deep garden frontages, with a boundary treatment of coarse sandstone, brick or sandstone plinth with iron railings as positive features. A key feature and vulnerability of the area includes "*protection of traditional boundary and streetscape treatments*" and "*erosion threat from minor changes to unlisted properties*". The statement continues to describe the boundary treatments in the immediate area and considers the gap in the front boundary and vehicle parking bay in the front garden of No 15 Brandling Park, the appeal site, to be incongruous when travelling along the road. The strength of the frontage is visually weakened not only by the gap being there but by the additional discordant appearance of a vehicle parked in the front garden adjacent to the highway.
29. The appellant does not dispute these matters but in his final comments invites consideration of Nos 14 and 9 as examples which provide a context for the history at the appeal site. No 14 has a vehicular access but is a large corner property with a much wider frontage than the appeal site whilst No 9 also has a wider frontage and is not in the immediate terrace where the subject property lies. Neither provides a compelling justification for erosion of the strong uniform enclosure to the prominent frontage where the appeal premises lie.
30. I have a statutory duty to pay special attention to the desirability of preserving the character or appearance of the CA. The use of the front garden of the appeal premises for vehicle access and parking fails to preserve the continuity and appearance of the terrace and the character of the CA and causes harm to the street scene through over development of the front amenity spaces. The harm caused is considerable and conflicts with the high-quality design aims of CS Policy CS15 and DAP Policy DM20 through its uncoordinated approach in relation to the established neighbouring frontages. It also fails to conserve or enhance the significance of the CA in conflict with DAP Policies DM16 and DM20 by failing to take due account of the significance of the CA, its setting and surrounding views.
31. I also note that there was a planning application by the same appellant for an amended scheme Ref 2023/0443/01/HOU for erection of a new entrance gate and creation of on-site car parking space for an electric car. It was refused and dismissed on appeal Ref APP/M4510/D/23/3329464 in January 2024, citing failure to preserve or enhance the character or appearance of the CA for similar reasons as I have set out. The deemed application before me, like the proposal dismissed on appeal would enable a car to park in the front garden. Quite clearly, the previous Inspector was of the view that a car being parked within the front garden would be at odds with the prevailing character of the area and I would agree.

32. The appellant makes no case based on national guidance. There is a clear conflict with key policies of the adopted development plan and no other considerations advanced by the appellant lead me to conclude that the deemed application should be determined other than in accordance with that development plan.
33. Accordingly planning permission should be refused on the deemed application.

Ground (f)

34. An appeal on this ground is that the requirements of the notice are excessive. The notice was served with alternative requirements, taking due account of s173(4) of the 1990 Act to remedy the breach of planning control by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place restoring the boundary to its original condition.
35. The appellant's case on this ground continues to be made on the incorrect assumption that planning permission exists for what has occurred on site. That matter has been discussed in relation to the other grounds of appeal.
36. Option 1 merely offers the opportunity to revert to the pre-existing condition of the premises prior to when the notice was issued. It is not mandatory, but it is a reasonable and not excessive default position for the Council to take if the other options are not pursued.
37. Option 2 appropriately requires as an alternative full implementation of the approved permission within a certain period of time. Option 3 is to install metal railings on the inside of the stone pillars, without having to erect the pedestrian gate in the centre. Option 3 offers the least amount of remedial work to remedy the breach of planning control.
38. Each alternative requirement entails removal of the vehicular access which together with the alternative boundary treatment offered, is not an excessive requirement. However, the effect of upholding the notice and its requirements would be to enforce a time scale on the appellant to remove the vehicular access or face the consequences of failure to comply with the notice. That is entirely reasonable in the circumstances and not excessive. The appeal on this ground fails.

Ground (g)

39. An appeal on ground g) is that the period for complying with the notice is too short. A period of six months is requested to be substituted for the four months stipulated in the notice. The appeal form also ambiguously suggests a period of twelve months because the appellant considers there is no actual physical harm being caused. Four months is more than adequate a period in my view to require the works to be commissioned and completed by builders. No good reason has been given as to why the construction requirements would take more than four months to complete or evidence supplied that the works could not be carried out within a four-month timeframe.
40. In the circumstances the appeal on ground (g) fails.

Conclusion

41. 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).

Grahame Kean

INSPECTOR