



Appeal Decision

Site visit made on 24 June 2025

by **Peter White BA(Hons) MA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3 July 2025

Appeal Ref: APP/K3605/C/24/3346613

Land at 107 Ditton Hill, Long Ditton, Surbiton KT6 5EJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr A Perpalaj against an enforcement notice issued by Elmbridge Borough Council.
- The notice was issued on 30 May 2024.
- The breach of planning control as alleged in the notice is, within the last 10 years, and without planning permission, the installation of a wall and door along the boundary of the land with Devonshire Drive.
- The requirements of the notice are:
 - (i) Remove the wall and door along the boundary with Devonshire Drive; or
 - (ii) Reduce the height of the wall to 1 meter above ground level including the door; and
 - (iii) Remove all resultant waste and debris.
- The period for compliance with the requirements is: 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (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 ("the DPA") under section 177(5) of the Act.

Summary of decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. On 13 February 2025, after the Notice was issued, a "retrospective application for side boundary wall" was permitted by the Council ("the 2025 planning permission"). It permitted the retention of the wall with modifications and was subject to conditions requiring those modifications to be carried out. The parties have been afforded an opportunity to comment on the implications of that permission.
2. Although no formal appeal has been made on ground (c), the appellant claims planning permission was granted for the door as part of a previous planning permission (reference 2023/1451). The Council has been afforded an opportunity to comment on this matter, and as no injustice would arise to either party in doing so, I have considered that argument below as an appeal on ground (c).
3. The appellant considers the Notice is unclear on the basis that it fails to specify the specific section of the Act the development is in breach of. However, the Notice clearly describes the breach of planning control and expressly states that it has been issued under Section 171A(1)(a) of the Act, which relates to the carrying out of development without planning permission.
4. I do not have jurisdiction to deal with submissions as to whether or not the Council acted within their powers in terms of the expediency of issuing the notice.

The appeal on ground (c)

5. Appeals on ground (c) are made on the basis that the matters alleged in the Notice do not constitute a breach of planning control. The appellant's case on ground (c) relates only to the door.
6. Neither party disputes that the erection of the door is development under Section 55 of the Act, or that planning permission is not required for it under Section 70. The appellant's case is that planning permission has been granted for it.
7. In 2023, before the Notice was issued, the Council granted planning permission for development described as, "two-storey side extension, single-storey front extension, single-storey side extension with air conditioning units, front/side gates with piers and metal railings, front canopy and alterations to fenestration following demolition of existing garage, conservatory and chimney stack." However, the appellant acknowledges that the drawings associated with that permission do not show the wall or the door within it, and it is clear that that planning permission did not grant consent for the door subject to the Notice.
8. The appellant now also claims the door was 'permitted development', but I have seen no evidence that was the case. It stands adjacent to a highway used by vehicular traffic and exceeds 1m above ground level. Neither have I seen any evidence that it formed part of a gate, fence, wall or other means of enclosure maintained improved or altered such that it did not exceed its former height. But even if that were the case, the door is part of the wall constructed, which is development which requires planning permission and was constructed without it.
9. The development as a whole, including the door, therefore constitutes a breach of planning control.
10. The appeal on ground (c) therefore fails.

The appeal on ground (a) / the DPA

11. Appeals on ground (a) are made on the basis that planning permission ought to be granted for the matters stated in the Notice as constituting the breach of planning control.

Main issues

12. The main issues are:

- the effect of the development on the character and appearance of the street scene and surrounding area, and
- the effect of the appellant's fallback position in relation to the 2025 planning permission.

Character and appearance

13. In the vicinity of the Land, Ditton Hill is characterised by detached dwellings set back from the road, with visually open or vegetated boundaries with the road. At road junctions, properties on Ditton Hill generally face the road, with side boundaries along the drives, lanes and closes serving further dwellings to the north and south.

14. 107 Ditton Hill ("No 107") is located on the corner with Devonshire Drive, along which it has a long side boundary. Similar relationships are found with 105 Ditton Hill opposite and 119 and 120 Ditton Hill at the junction with Mandeville Drive. In each of those cases, the rear garden is enclosed by timber fencing in the region of 1.8m high, with some trellis in parts extending higher.
15. The rendered wall enclosing the rear garden of No 107 is a notable feature in Devonshire Drive. Its length and unbroken pale finish contrasts with the low boundary walls with vegetation above along the majority of the drive, and with the darker tones and softer appearance of the fence opposite, with its planked timber panels and concrete posts. At my site visit, I saw no other boundary treatment of such a scale and prominence. Although it reflects the pale colour of the short wall on the adjoining property, the wall at No 107 is substantially longer and taller, and conflicts with the character and appearance of the area.
16. The appellant considers the wall could easily be repainted in a beige colour, similar to the stonework on the main dwelling, or a mid-grey colour. But neither would overcome the harm arising from the substantial unbroken length of the wall, combined with its height.
17. In conclusion, for the reasons given above, the development is harmful to the character and appearance of the area. It conflicts with Elmbridge Core Strategy (2011) Policy CS17 and Elmbridge Local Plan Development Management Plan (2015) Policy DM2. Together these policies require development to deliver high quality design which enhances the public realm and street scene and preserves the character of the area.

The fallback position

18. The 2025 planning permission granted consent for retention of the wall, with parts to be lowered in height, and brick slips to be constructed in vertical columns. The effect of these works would be to provide visual interest and relief along its length and, in granting planning permission for it, the Council accept that it would not be harmful to the character and appearance of the area.
19. I note that the first condition of the planning permission requires the development to be commenced within 3 months, but the development was described as a retrospective application, and has therefore been commenced. The condition also permits a time period for its alteration, and that time has not expired. The 2025 planning permission could therefore be carried out and there is a realistic prospect of that occurring.
20. However, as the 2025 planning permission would not result in harm to the character and appearance of the area, it is not justification for the development as constructed.

Other matters

21. The solid wall at its current height provides a degree of security to the appellant in relation to his rear garden and to the adjoining neighbour. However, the wall in its current form is not the only means by which security can be obtained, and this matter attracts only limited weight in favour of the development.

The planning balance

22. The development is harmful to the character and appearance of the area and conflicts with policies of the development plan, attracting significant weight against the development. The appellant's fallback position attracts moderate weight and the security the wall provides attracts further limited weight in favour of the development. The considerations in favour therefore do not outweigh the harm identified and the conflict with the development plan.

Obvious alternative

23. I may also consider whether there is an obvious alternative to removal of the wall and door or reduction in their height to 1m above ground level, if it would overcome the planning harm at less cost and disruption to the appellant. But I may only do so if that alternative is part of the matters constituting the breach of planning control.
24. The retention of the wall at a slightly reduced height and re-painting in a beige or grey colour would be part of the matters. However, the appellant has not qualified what a 'slight reduction' might entail, and I found above that repainting would not overcome the harm to the character and appearance of the area. It has therefore not been demonstrated that these measures would overcome the harm identified. Neither would they reduce the harm to a level at which other considerations would outweigh the conflict with the development plan.
25. The second potential alternative is the development for which the Council has granted the 2025 planning permission. That development comprises part of the matters, retaining parts of the development along with cosmetic additions. It is an obvious alternative which would overcome the planning harm at less cost and disruption to the appellant.

Conditions

26. The Council has not provided a list of conditions in the event that I allow the appeal, but the 2025 planning permission clearly does so.
27. A condition requiring completion of the works, or removal or alteration of the wall in the manner set out in the enforcement notice is necessary, and should require the development to be carried out in accordance with the plan submitted.
28. The appellant's case in relation to the removal or reduction of the wall, as required by the Notice, was that 3 months would be needed for those works. The alterations proposed for the retention of the wall may require a longer period and the Council's planning permission for them gave five months. The appellant seeks six months, and I consider that to be reasonable.
29. The condition is imposed to ensure that the alterations are implemented in order to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively. The condition will ensure that the development can be enforced against if the requirements are not met.

Conclusion on ground (a)

30. In conclusion, the development is harmful to the character and appearance of the area and conflicts with policies of the development plan. However, the development

could be made acceptable in planning terms by the imposition of planning conditions to require its alteration in the manner shown in the 2025 planning permission.

31. The appeal on ground (a) therefore succeeds.

Conclusion

32. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The enforcement notice will be quashed.

33. In these circumstances the appeals on grounds (f) and (g) do not fall to be considered.

Formal Decision

34. 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 installation of a wall and door along the boundary of the land with Devonshire Drive at 107 Ditton Hill, Long Ditton, Surbiton KT6 5EJ as shown on the plan attached to the notice and subject to the following condition:

- (1) Unless the alterations to the wall and door shown on drawing 014 Rev B dated 22/05/2023 (as submitted to the Council on 8 January 2025 in relation to planning permission 2024/2242) are implemented in full within 6 months of the date of this decision, the wall and door shall be removed or reduced to a height of no more than 1m above ground level and the resultant waste and debris shall be removed from the land within 9 months of the date of this decision.

Peter White

INSPECTOR