



Appeal Decision

by John Braithwaite BSc(Arch) BA(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2025

Appeal Ref: APP/B0230/C/23/3331542

14 Bank Close, Luton, Bedfordshire LU4 9NX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Glyn Evans against an enforcement notice issued by Luton Borough Council.
 - The notice was issued on 13 September 2023.
 - The breach of planning control as alleged in the notice is the erection of a rear side boundary wall of different levels in height which increases in height towards the rear of the garden with the highest section of brick wall in excess of 2 metres on the land.
 - The requirements of the notice are: (i) Reduce the height of the brick wall so that it is no more than 2 metres in height; and (ii) Remove all associated building materials and rubble and waste materials arising from compliance with step (i) above from the land.
 - The period for compliance with the requirements is three calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).
-

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

2. The appeal has been made under ground (c) only. In these circumstances and given that the appeal must be determined on the basis of the situation that prevailed on the date that the enforcement notice was issued, visiting the site is unnecessary. The appeal has therefore been determined without undertaking a site visit.

Reasons

3. To succeed under ground (c) the development that is the subject of the enforcement notice must either benefit from planning permission or it is development permitted under the provisions of The Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). The rear side boundary wall that is the subject of the notice does not benefit from planning permission.
4. Class A of Part 2 of Schedule 2 of the GPDO states that the erection of a wall is permitted development, but development is not permitted under Class A if the wall exceeds two metres in height. The rear side boundary wall does not exceed two metres in height on the Appellant's side, but does exceed two metres in height on his neighbour's side at 12 Bank Close. The Council therefore maintains that the wall is not development permitted under Class A of Part 2 of Schedule 2 of the GPDO.
5. The Government has not published Technical Guidance for Part 2 of Schedule 2 of the GPDO, as they have for Part 1, and no party has brought forward any case law or appeal decisions to assist in determination of this appeal.

6. Development is permitted under Class A for a wall adjoining a highway if the wall does not exceed one metre in height. Common sense dictates, irrespective of the level of the land enclosed by the wall, that the height of the wall should be measured from the level of the highway. So, in situations such as this the wall could exceed one metre in height when measured from the level of the land enclosed by the wall.

7. 14 Bank Close and neighbouring properties have been built on sloping ground. The Technical Guidance to Part 1 indicates how the height of an outbuilding in the garden of a dwellinghouse, for the purposes of judging whether it is development permitted under Class E of Part 1, should be measured if the building is or would be on sloping ground. The guidance is that the height "...should be measured from the highest ground level immediately adjacent to the building...". If this guidance is applied to the wall in this case then its height should be measured from the highest ground level immediately adjacent to the wall; which is the level of the Appellant's garden.

8. The two analogous situations referred to above, and applying common sense, indicate that the height of the rear side boundary wall should be measured from the highest ground level immediately adjacent to the wall. The Council does not claim that the wall, when so measured, exceeds two metres in height. The rear side boundary wall that is the subject of the enforcement notice is development permitted under Class A of Part 2 of Schedule 2 of the GPDO. The ground (c) appeal thus succeeds.

John Braithwaite

Inspector