The Planning Inspectorate

Appeal Decision

Site visit made on 12 February 2018

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 16 February 2018

Appeal Ref: APP/B5480/C/17/3177643
20 Wilfred Avenue, Rainham RM13 9TX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Miss Charlotte Warde against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 8 May 2017.
- The breach of planning control as alleged in the notice is without planning permission, the erection of two brick walls to the side boundaries of the property, located between the front of the property and the pavement/highway.
- The requirements of the notice are:
  (i) For their entire length, reduce the height of the two boundary walls situated at the front of the property to a height no greater than 1.1 metres high when measured from the adjacent natural existing ground level.
  (ii) Remove from the site all associated building materials, bricks, rubble and other material associated with compliance with requirement 1. above.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed and the enforcement notice upheld.

Procedural Matters

2. Since no appeal has been brought on ground (a) with payment of the prescribed fee, there is no deemed planning application to consider. It follows that arguments on the planning merits are not relevant in this appeal.

Reasons

3. The appeal proceeds on ground (f) only which is that the steps required by the notice to be taken exceed what is necessary to remedy the breach.

4. The appeal property is a mid-terraced house with a small front garden paved over to allow parking. The appeal concerns two brick walls built on each side of the front garden which separate No 20 from the neighbouring properties. Where the walls adjoin the front elevation, they are approximately 2m high. The walls had continued at this height before sloping steeply down to around 1.1m where they abut the public footway. By the time of my site visit, part of each wall had been demolished. Nevertheless, the position is to be adjudged as things stood when the notice was issued.

5. An application[1] for a Lawful Development Certificate seeking to establish that the walls are permitted development was dismissed on appeal[2] on 19 January 2017. The Inspector found that the walls are adjacent to the highway and because they exceeded 1m in height they are not permitted development[3]. Notwithstanding that point, the Inspector went on to say that the construction of the walls create an obstruction to the view of persons using the highway used by vehicular traffic so as to be likely to cause danger to such persons. For that reason also the walls are not permitted development pursuant to Article 3(6) of the Order. The enforcement notice follows that decision.

6. Section 173 of the Act indicates two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).

7. The enforcement notice does not require the demolition of the walls in their entirety, but their reduction in height to no greater than 1.1m. This equates to the calculated height of the previous side walls. The reasons for issuing the enforcement notice cite the adverse effect on highway and pedestrian safety plus harm to the appearance of the site and character of the area. The notice therefore seeks to address injury to amenity.

8. Permitted development rights do not apply retrospectively. Therefore, unlawful development cannot be modified to become permitted development because the time for assessing if it is permitted development is the time it was built.

9. The point in issue is whether or not it is reasonable for the walls to be reduced to 1.1m or less in height to address the injury to amenity. The appellant suggests that there is little to be gained by reducing the wall below the existing height of the garden wall belonging to No 18. It is submitted that a visibility zone of 2.1m deep measured from the pavement would suffice without requiring a reduction in the whole of each wall. Reference is made to a drawing[4] to illustrate the appellant's proposal, but this has not been provided.

10. Both walls project for a distance of around 3.25m. The drive is not very large. I saw a van parked on the drive which was slightly overhanging the pavement as also shown in photographs produced by the Council. A motorist reversing a vehicle off the drive would not have clear visibility of pedestrians along the pavement if the walls remain at the present height nearest to the dwelling. Thus, a reduction in the depth of the walls will not be sufficient to overcome the highway safety concerns.

11. Therefore, the requirements do not exceed what is necessary to address the injury to amenity. The appeal on ground (f) fails.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed.

K R Saward INSPECTOR

[1] Made under section 191(1)(b) of the Town and Country Planning Act 1990, as amended.
[2] Appeal Ref: APP/B5480/X/16/3152643
[3] Under Class A of Part 2 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015
[4] ref: 20 WIL-wall-1