



Appeal Decision

by Vicki Hirst BA(Hons) PG Dip TP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 24/05/2024

Appeal reference: CAS-02873-N3V8P9

Site address: 11 Meadow Rise, Townhill, Swansea, SA1 6RG

- 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 Diane Fraser against an enforcement notice issued by the City and County of Swansea Council.
 - The enforcement notice, numbered ENF/2023/0041, was issued on 26 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission, a brick wall was constructed forward of the principal elevation of the property contrary to Condition 2 attached to planning permission 99/0468. Condition 2 attached to planning permission 99/0468 restricts fences, gates or wall being erected forward of any wall of the dwellinghouse which fronts the road, which reads:
02 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) no fences, gates or walls shall be erected within the curtilage of the dwellinghouse forward of any wall of that dwellinghouse which fronts onto a road.
 - The requirements of the notice are (i) Remove the front and side brick wall forward of the dwellinghouse, as identified in pink on Appendix 1. (ii) Remove all waste materials arising from the above operations from the land.
 - The period for compliance with the requirements is three months beginning with the day on which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - A site visit was made on 29 February 2024.
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Decision

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

Procedural Matters

2. The enforcement notice contains a sub-heading titled "Failure to Comply with a Condition". However, the notice alleges a breach of planning control under Section 171A(1)(a) of the Town and Country Planning Act 1990 (as amended) (the Act) (ie carrying out development without the required planning permission). Whilst the Council refers to the breach of a condition in the matters which appear to constitute the breach of

planning control, the notice has been framed as a breach comprising operational development. I have therefore made my determination on this basis.

3. The appellant's submissions contain numerous references to the Council's handling of this case and which are the subject of a formal complaint to the Council. Such matters are not for me to comment on and, except where referenced in my decision, are not pertinent to my considerations with regard to the particular grounds of appeal pleaded against the serving of the enforcement notice.

The appeal on ground (b)

4. This ground of appeal is that the matters set out in the enforcement notice have not occurred.
5. The appellant's case under this ground is that any breach of a condition as alleged in the enforcement notice has not occurred as a condition removing permitted development rights was later superseded. Therefore, it is contended that no planning permission is required. She also disputes that two sets of conditions can be applied to the subject property, and even if they could they conflict with each other.
6. Such matters are more relevant to an appeal under ground (c) (ie that those matters [if they have occurred] do not constitute a breach of planning control) and I have considered them further below. An appeal under ground (b) is only concerned with whether the works have occurred as a matter of fact. It is evident from the evidence before me and from my observations on site that a wall has been constructed forward of a wall of the dwelling that fronts the road. The appellant does not dispute that the wall has been erected. As such I am satisfied that the works have occurred and the appeal under ground (b) fails.

The appeal under ground (c)

7. This ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control.
8. The Town and Country Planning (General Permitted Development) Order 1995 (as amended) sets out certain classes of development for which a grant of planning permission is automatically given. Where such rights are conferred no application for planning permission is required. Such rights can be withdrawn by conditions on planning permissions.
9. The parties have drawn my attention to two planning permissions referenced 99/0468 and 2001/1239 which relate to the housing estate within which the appeal property is located. It is evident from the plans accompanying the permissions that the red line boundaries (ie the application site) relate to different parts of the same estate. The appeal property is clearly within the red line boundary for the planning permission 99/0468 and outside the boundary for 2001/1239. Despite the appellant's assertions to the contrary, it is not unusual to have different planning permissions relating to the same housing development particularly where this has been built in phases.
10. Condition 02 of the relevant planning permission (99/0468) removes the permitted development rights for the erection of any fences, gates or walls within the curtilage of any dwellinghouse forward of any wall of that dwellinghouse which fronts onto a road. Whilst I note the appellant's comments, I have no evidence before me that this condition has been superseded, removed or varied since it was imposed.
11. I am satisfied that the wall, the subject of the alleged breach, is located within the curtilage of the dwellinghouse forward of a wall of that dwellinghouse that fronts onto a road. It is located within the site area subject of condition 02 of planning permission

99/0468. As the permitted development rights have been withdrawn by condition 02, it is operational development that requires planning permission. I have no evidence that any formal planning permission has been granted for it and as such, it is a breach of planning control.

12. Much of the appellant's case on this ground relates to a belief that the Council had verbally agreed that the wall could be constructed without the need for a planning application. I note that a complaint has been made to the Council in this regard. However, caselaw has established that there can be no estoppel (ie asserting a right) in such circumstances. At the time of the appellant's enquiry to the Council regarding the need for planning permission there was in place the option of seeking a formal determination under Section 192 of the Act. As no such determination was sought the appellant cannot rely on the informal advice of a Council officer. Indeed, there is a general principle that establishes that a public authority cannot be estopped in such circumstances from performing their statutory duties (such as serving an enforcement notice).
13. The reference to other properties within the estate that have walls are not relevant to my determination as to whether the wall at the appeal property constitutes a breach of planning control.
14. I find the wall constitutes a breach of planning control and the appeal on ground (c) therefore fails.

The appeal under ground (d)

15. This ground of appeal is that at the date the enforcement notice was issued no enforcement action could be taken in respect of any breach of planning control. In essence this means that what is alleged is immune from enforcement action having subsisted for the four-year time limit laid down by section 171B of the Act. Given that the notice has been made on the basis of operational development, 4 years is the requisite period.
16. The appellant states that the wall was built around the front of the property in November 2021. This is corroborated by the Council's evidence. The enforcement notice is dated 26 June 2023. I am satisfied from the evidence before me that the subject wall was substantially completed less than four years prior to the enforcement notice being issued. Therefore, the appeal on ground (d) fails.

The appeal under ground (e)

17. An appeal under this ground is that copies of the notice were not served as required by Section 172 of the Act. Section 172 requires a copy of the enforcement notice to be served on the occupier of the land to which it relates and on any other person with an interest in the land.
18. The appellant has not made any case that the notice was not properly served on this basis but rather claims that it was not expedient to serve a notice due to the ongoing discussions with the Council and which are the subject of a complaint. Such matters are not pertinent to an appeal under ground (e).
19. The Council has confirmed that a Land Registry search was carried out and the notice was served on the appellant as the sole person with an interest in the land. I have no reason to believe the notice was not served in accordance with the requirements of the Act and the appeal therefore fails on this ground.

The appeal on ground (a)

Main Issue

20. The main issue is the effect of the development on the character and appearance of the area.

Reasons

21. The appeal property is a detached dwelling of brick and render construction situated within a residential estate of similar properties. Frontages within this part of the estate are largely open and contain gardens and parking areas. The resulting character and appearance of the street scene is one of openness devoid of formal boundary features.
22. A wall of complementary bricks to the main house has been constructed around the frontage of No 11. The wall is situated on the boundary with No 9 and steps up towards the road and then follows the pavement edge across approximately half of the property's frontage.
23. Whilst I note the wall has been constructed at a relatively low height and which the appellant states accords with the usual permitted development rights, it nonetheless appears at odds with the openness of the surrounding street scene. It introduces built form that starkly contrasts with the absence of boundary features in the surroundings. I find it has a negative and harmful effect on the open character and appearance of the area.
24. The appellant has drawn my attention to similar walls throughout the overall development and contends that the provision of hedges and planting have resulted in the estate losing its open plan character. However, from my own observations on site, in the context of the particular street in which the appeal property is viewed, the general character and appearance is one devoid of boundary features and contains a high degree of openness.
25. I find the wall conflicts with the requirement of Policy PS2 of the adopted Swansea Local Development Plan (LDP) for development to enhance the quality of places and spaces and respond positively to aspects of local context and character that contribute to a sense of place. Whilst I note the Council's Placemaking Guidance for Householder Development refers to the benefits that appropriate boundary treatments can bring, this guidance must be applied with regard to the particular design principles which a development incorporates and the context in which it is located. In this instance, it would appear the development was designed as an open plan estate with an absence of frontage boundary treatments and which the subject wall conflicts with.

Other Matters

26. The appellant states that the wall is required to safeguard her human rights and provides security and privacy.
27. As a consequence of the reasons provided for constructing the wall, the rights set out in the Human Rights Act 1988 (HRA) are engaged. Specifically, Article 8(1) of the HRA provides that everyone has the right to respect for their private and family life, their home and their correspondence. Dismissing the appeal would interfere with such rights.
28. However, given the low height of the wall which allows views into the property over it, and that it does not fully contain the property due to the parking area which is open to the road, I am not persuaded that it serves any particular purpose in providing privacy or security to the property. Furthermore, rights under the HRA are qualified, and interference may be justified where it is proportionate and in the public interest.

29. The character and appearance of the area are in the wider public interest. Taking account of my findings above in relation to the harm that the wall causes in this regard, and the limited interference that would arise to the appellant's rights under the HRA, I find the interference that dismissing the appeal would have with the appellant's rights is proportionate and in the public interest in this case.

Conclusion on ground (a)

30. I have had regard to all other matters raised. I conclude the development is harmful to the character and appearance of the area contrary to Policy PS2 of the LDP. I find no matters that outweigh the conflict with the development plan in this instance. As such the appeal fails on ground (a) and the deemed planning application does not succeed.

The appeal on ground (f)

31. This ground of appeal is that the steps required to be taken by the notice exceed what is necessary to remedy any breach of planning control, or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

32. Under this ground the appellant seeks to retain a low edging to demarcate the boundary and to retain the land due to the change in levels and to prevent the spillage of chippings from falling onto her property and the walkway. No details of such an option have been provided.

33. Taking into account the stated purpose for issuing the notice and its requirements, it is evident the notice seeks to remedy the breach of planning control under Section 173(4)(a) of the Act. The suggested changes would not achieve this aim. As set out above, the permitted development rights relating to the provision of boundary features such as walls forward of the front wall of the house have been removed. The retention of a part of the wall would remain a breach of planning control and therefore there is no lesser step that could be undertaken that would constitute permitted development rights and not constitute a breach of planning control.

34. I am satisfied the requirements of the notice are not excessive and there is nothing before me that leads me to find there are lesser steps that would satisfy the purpose of serving the notice. The appeal on ground (f) therefore fails.

The appeal on ground (g)

35. This ground is that the time given to comply with the notice is too short. There is some disparity in the submissions as to whether an appeal has been brought under ground (g) with the appellant's statement of case referring to this ground but stating in her final comments that only grounds (a) to (f) are being appealed. As the parties were informed that the ground (g) appeal would be considered I have taken it into account.

36. The appellant has not provided any reasons as to why she considers the specified three months to be too short. In my assessment this is a reasonable time to undertake the relatively minor works to remove the wall and arising waste material and I have no reason to extend the period for compliance. The appeal on ground (g) therefore fails.

Overall Conclusions

37. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed on any of the grounds. I uphold the enforcement notice and refuse to grant planning permission on the deemed application.