The Planning Inspectorate

Appeal Decisions

Site visit made on 13 May 2024

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date 18 June 2024

Appeal A Ref: APP/W1145/C/22/3303224
Appeal B Ref: APP/W1145/C/22/3303225
Land adjoining The Ship on Launch, Barnstaple Street, East-the-Water, Bideford EX39 4AE

- 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 Stephanie Croft (Appeal A) and Philip Clamp (Appeal B) against an enforcement notice issued by Torridge District Council.
- The enforcement notice was issued on 13 June 2022.
- The breach of planning control as alleged in the notice is the unauthorised construction of a wall shown in Appendix B.
- The requirements of the notice are (i) Remove the unauthorised wall from the land shown outlined in red in Appendix B (ii) Remove all resultant debris from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary Decision: The appeals are allowed and the enforcement notice is quashed.

Preliminary Matters

1. I have taken the postcode above from the appeal form since none was stated on the enforcement notice.

2. The appellant's ground (c) case includes submissions representing a hidden ground (b) appeal i.e. that the 'construction of a wall' has not occurred as works undertaken represent an alteration to an existing wall. The Council has already dealt with the content of the hidden ground (b) submissions in its ground (c) case, and I deal with these grounds together given their overlap.

3. Late representations were received from a party who recently purchased 3 Vinegar Hill ('No 3'). These were accepted in the interests of natural justice since this party was not aware of the appeal such as to have been able to comply with the appeal timetable. The parties were given an opportunity for comment and the Council's comments have been taken into consideration.

The appeals on ground (b) and (c)

4. The ground (b) appeal is that the matters alleged have not occurred and the ground (c) appeal is that those matters (if they occurred) do not constitute a

breach of planning control. The onus is on the appellant to make their case on the balance of probability.

5. There is no suggestion that the appeal development is immune from enforcement action by way of the elapsing of time, nor that it does not represent development requiring planning permission under s55 of the Town and Country Planning Act 1990 ('1990 Act'). I have no reason to take a different view on these matters on the evidence before me.

6. The appellant's case then is that the works undertaken do not represent a new wall, but rather an alteration to an existing boundary wall/means of enclosure and as such, represent permitted development ('PD') under Schedule 2, Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('Class A'). Class A states that '*The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure'* is PD subject to meeting with the limitations in paragraph A.1.

7. The Council assessed that the appeal development represents a new wall that does not meet with the paragraph A.1(b) height limitation which is that '*the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level'*. The appellant's position is that the works represent an alteration to an existing enclosing wall/means of enclosure that does not exceed its former height and so accords with the limitation in A.1(c) that '*the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height…*'[1].

History/detail of the appeal development

8. The appeal site includes an area of land forming the car park associated with the adjacent building known as 'The Ship on Launch'. To the front boundary of the car park is a low boundary wall and set-back metal gate. Alongside the boundary with Vinegar Hill is a higher boundary wall which adjoins the gable end wall of No 3. Across the rear boundary of the car park (from roughly north to south) is No 3's gable end wall, a section of walling which adjoins a historic barn structure, which then is attached to a staircase (with a gate across) before terminating at the Ship on Launch building.

9. There is a lengthy history between the appellants and the former owner of No 3 regarding works undertaken to No 3's gable end by its former owner, which resulted in civil litigation. Whilst the civil law outcome is not determinative of lawfulness in this appeal, this history informs the nature of the appeal development and so is summarised below.

10. Historically there was a row of cottages from Vinegar Hill down to Barnstaple Street. A number of these cottages were demolished, with the appeal site car park formed at some stage after this. No 3's gable end wall is then a party wall between the appeal site and No 3 and this wall previously was formed of a sloped section which formed the wall of an outhouse, along with a flat section which enclosed the yard area at No 3.

[1] or *'the height referred to in paragraph A.1 (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater'*

11. Around 2002, an opening was created in the sloped section of No 3's gable end. Later, around 2016 (following incorporation of the yard into the house at No 3) part of the flat-topped section of the gable end wall was demolished to enable insertion of French doors. Following civil litigation, a Court Order was made against the former owner of No 3 for damages related to the cost of repair works to the party wall (from damage from the demolition and insertion of French doors).

12. The works attacked by the notice represent the appellants' attempt to repair the wall in accordance with the terms of the Court Order. The appellants opted to construct the appeal development rather than infill No 3's openings due to concerns of causing criminal damage to No 3's window/door frames.

13. Turning to the development which is attacked by the notice, this is essentially formed of block work constructed on top of a pre-existing buttress which forms part of the end gable wall to No 3. The new blockwork has been tied into the pre-existing stone walling on either side.

Whether maintenance/alteration/improvement

14. The relevant terms 'maintenance, improvement or alteration' are not defined in either the GPDO or the 1990 Act. The appellant references case law[2] setting out principles related to construing these terms including that: these terms should be given their ordinary meaning and interpreted in a common sense manner; that it is a matter of fact and degree whether works of maintenance in fact amount to reconstruction; and that, by way of example, removal and rebuilding of one wall of a cottage would amount to alteration/improvement, whereas demolishing and rebuilding all four walls would amount to reconstruction. I share the appellant's view that the principles laid down in these judgements are relevant irrespective of how dated these cases may be.

15. The Council submits that the appeal development is a new wall on the basis that, as it extends upwards it 'projects beyond the face of the existing boundary/party wall' and that there is a 50mm cavity between the two; the 'original wall' is still in situ behind the appeal development; a significant amount of new building materials was required; and the appeal development does not only infill openings which were the subject of the civil dispute.

16. In my assessment, the appeal development plainly does not represent reconstruction of the gable end wall in the sense of it having been demolished and rebuilt from ground level up. Rather, blockwork has been added to the pre-existing wall on top of the existing buttress. Whilst there is a cavity as explained, the new blockwork is nonetheless attached to the pre-existing wall across the full width of the buttress; it is not a free-standing new wall.

17. As to the quantity of materials used, the appeal development has not used a significantly greater quantity of building materials than would have been used to infill the openings created by the French doors and window. The quantity used does not in my view take the appeal development outside of what could be deemed an alteration as a matter of common sense.

[2] *Evans v Secretary of State for Communities and Local Government* [2014] EWHC 4111 (Admin); *Street v Essex CC* (1965) 19 EG 537; *Sainty v Minister of Housing and Local Government* (1964) 15 P. & C.R. 432

18. Indeed, whilst not determinative, I note that works representing an 'alteration' of a dwellinghouse[3] under the GPDO include, for example, works which would represent an enlargement of the dwellinghouse, and also works such as cladding. Both of these certainly could involve use of significant quantities of building materials relative to the amount of materials used in a dwelling's construction.

19. I find then as a matter of fact and degree that the appeal development does not represent the rebuilding of the pre-existing wall or a new wall, but rather an alteration/improvement to the pre-existing wall.

Whether an enclosing wall/means of enclosure

20. The Council's reasons for issuing the notice outline that the appeal development is 'not considered to be permitted development as it is a new wall over 2 metres in height, nor is it a means of enclosure'. In its statement, the Council explains its position that 'a new wall has been erected on site which exceeds the size thresholds within the GPDO'. The Council's reason for differentiating a wall and means of enclosure within the notice is apparently because they are 'specifically separated within Class A'.

21. The Council has thus assessed the appeal development against the size restrictions in Class A applicable to an enclosing wall. As such, there appears to be no dispute that the appeal development falls to be assessed under Class A. However, given the unusual site context here, I have assessed below for completeness whether the appeal development properly falls to be assessed under Class A as an enclosing wall/other means of enclosure.

22. There is no definition of a 'wall' or 'means of enclosure' in the GPDO or within the 1990 Act. Case law sets out that for an object to fall under Class A, it must have 'some function of enclosure' (i.e. a wall that does not play a part in the enclosure of anything will not fall under Class A), and that it is possible for certain walls to have a 'hybrid' function[4]. A complete surrounding of the land is not necessary and it will be a matter of fact and degree whether any gaps mean that the development falls 'outside the essential character of surrounding and so outside enclosure'[5].

23. The appellant cites the view of my colleague Inspector in an earlier appeal decision[6] that an object is not precluded from having the function of enclosure because it is only part of the means of enclosure. This approach is consistent with wording in *Prengate Properties* related to excluding from Class A a wall that 'neither encloses nor *plays any part in* the enclosure of anything' (my emphasis).

24. Turning then to the appeal development, this meets with the *Prengate Properties* threshold of having 'some function' of enclosure since it plays a part in visually, physically and functionally surrounding the appellants' car park, forming an almost continuous barrier in conjunction with other structures detailed above. Indeed, it is apparent that the structures which form this almost continuous boundary do not do so by happenstance. Rather, sections of

[3] Per Schedule 2, Part 1, Class A of the GPDO
[4] *Prengate Properties Ltd v SSE* [1973] 25 P&CR 311 ('*Prengate Properties*')
[5] *Wycombe DC v SSE* [1995] J.P.L. 223
[6] APP/C/92/J0405/621082

walling have been constructed between various structures seemingly to deliberately provide a continuous boundary.

25. Whilst the Council assessed the appeal development as against Class A size restrictions on the basis that it is an enclosing wall, as the original gable end wall in question formed part of the No. 3 dwelling house, it seems to fall to be assessed as an 'other means of enclosure' subject to the 'ejusdem generis' rule. This means that to be a 'means of enclosure', it must be similar to a gate, fence or wall[7].

26. The clear difference as compared to a freestanding enclosing wall, fence or gate is that the gable end wall forms part of the structure of No 3's dwellinghouse which encloses an internal volume. Clearly, a structure which encloses internal space (such as a dwelling) cannot be a means of enclosure of itself; the internal space which is enclosed does not represent enclosure of land for the purposes of Class A. However, in my view, a structure which encloses a volume can potentially form part of a means of enclosure in combination with other structures.

27. In this case, the pre-existing gable end wall of No 3 was very similar in materials, construction and height to the adjoining boundary wall which runs alongside Vinegar Hill. Indeed, prior to the former owners of No 3 incorporating its external yard area into the house, a section of the gable end party wall functioned as an enclosing wall to No 3's yard. In combination with the other structures present, it visually and physically forms part of an almost continuous and seemingly deliberate barrier around the car park creating a character of enclosure. Taking the above matters together, the gable end wall is sufficiently similar to a freestanding enclosing wall as to represent an 'other means of enclosure' under Class A.

Whether exceeds former height

28. The appellant accepts that if the appeal development were considered a new enclosing wall, it would exceed the 2m height limit in Class A. However, as outlined above, Class A permits an alteration/improvement to a means of enclosure provided that the new height would not *'as a result of the development, exceed its former height'.* I have found that the appeal development represents an alteration/improvement and not a new wall.

29. In this regard, the appellant has produced photographic evidence which shows that, prior to the demolition and insertion of French doors by the former owner of No 3, the height of the flat section of the original wall continued at the same height as the adjoining section of wall running alongside Vinegar Hill. The Council does not appear to dispute that this represents the former height (if I found that the appeal development represented an alteration/improvement rather than a new wall). The appellant's evidence is sufficiently precise on this point and so, on the available evidence, I find that the altered/improved means of enclosure does not exceed its former height.

30. Drawing these matters together, the appeal development falls within Class A as an alteration/improvement to a means of enclosure which does not exceed its former height. It is accordingly granted deemed planning permission by Class A and is lawful. The appeals on ground (b) and (c) succeed.

[7] *Ewen Developments Ltd v SSE and North Norfolk DC* [1980] JPL 404

Conclusion

31. For the reasons given above, I conclude that the appeals should succeed on grounds (b) and (c). The enforcement notice will be quashed. In these circumstances, the appeals on grounds (f) and (g) do not fall to be considered.

Formal Decision

32. The appeals are allowed and the enforcement notice is quashed.

V Bond
INSPECTOR