

APPENDIX

Committee: PLANNING

Date Of Meeting: 9th February 2011

Title of Report: TOWN AND COUNTRY PLANNING ACT 1990 APPEALS

Report of: A Wallis Planning and Economic Regeneration Director
Case Officer: Telephone 0151 934 4616

This report contains	Yes	No
Confidential information		✓
Exempt information by virtue of paragraph(s) of Part 1 of Schedule 12A to the Local Government Act 1972		✓
Is the decision on this report DELEGATED?	✓	

Purpose of Report:

To advise Members of the current situation with regard to appeals. Attached is a list of new appeals, enforcement appeals, developments on existing appeals and copies of appeal decisions received from the Planning Inspectorate.

Recommendation(s):

That the contents of this report be noted.

Corporate Objective Monitoring

Corporate Objective		Impact		
		Positiv e	Neutra l	Negati ve
1	Creating A Learning Community		✓	
2	Creating Safe Communities		✓	
3	Jobs & Prosperity		✓	
4	Improving Health & Well Being		✓	
5	Environmental Sustainability		✓	
6	Creating Inclusive Communities		✓	
7	Improving The Quality Of Council Services & Strengthening Local Democracy		✓	

Financial Implications

None.

Departments consulted in the preparation of this Report

None.

List of Background Papers relied upon in the preparation of this report

Correspondence received from the Planning Inspectorate.

Appeals Received and Decisions Made

From 30 December 2010 to 28 January 2011

Planning Appeal Decisions

9 Ormonde Drive, Maghull

S/2010/0774 - 2137720

Retrospective application for the erection of a single storey extension and garage to the side, a conservatory and a dormer extension to the rear of the dwellinghouse including extending the ridge line and raising the height of the gable wall (alternative to S/2004/0223 approved 13/04/2004)

Appeal Type: Written
Lodged Date: 07/10/2010
Decision: Allowed
Decision Date: 25/01/2011

155 Hart Street, Southport

S/2010/1231 - APP/M4320/D/10/2140819

Erection of a two storey extension to the rear of the dwellinghouse

Appeal Type: Written
Lodged Date: 26/11/2010
Decision: Allowed
Decision Date: 17/01/2011

13 Prestwick Drive, Crosby

S/2010/0985 - APP/M4320/D/10/2141339

Alterations to the roof from a hip to a gable together with the installation of 3 no dormer windows to the front and 3 no to the rear together with a extension to the side / front of the existing garage and a pitched roof over the existing flat roof (Resubmission of S/2010/0542, Withdrawn 19/05/2010)

Appeal Type: Written
Lodged Date: 29/11/2010
Decision: Allowed
Decision Date: 17/01/2011

5 Carr Road, Bootle

S/2010/1031 - 2138600

erection of a first floor extension to the side of the dwellinghouse (re-submission of S/2010/0642 withdrawn 16/06/2010)

Appeal Type: Written
Lodged Date: 17/11/2010
Decision: Dismissed
Decision Date: 07/01/2011

New Planning Appeals

58 Moor Drive, Crosby

S/2010/0926 - 2143663

Retrospective application for a single storey extension to side and rear together with a first floor extension to the side of the dwellinghouse

Appeal Type: Written
Lodged Date: 19/01/2011
Decision: PENDING
Decision Date: 20/01/2011

52 Church Road, Seaforth

S/2010/1408 - 2144035

Construction of a vehicular access to a classified road (A5036) (Re-submission of S/2009/1080 refused 12/02/2010)

Appeal Type: Written
Lodged Date: 14/01/2011
Decision: PENDING
Decision Date: 14/01/2011

80 Raven Meols Lane, Formby

S/2010/0995 - 2144290

Part retention of a porch at the front of the bungalow

Appeal Type: Written
Lodged Date: 20/01/2011
Decision: PENDING
Decision Date: 20/01/2011

Blue Anchor Inn 32 School Lane, Aintree

S/2010/0937 - 2144917

Installation of one roller shutter to each window and door at ground floor level (Sixteen roller shutters in total)

Appeal Type: Written
Lodged Date: 24/01/2011
Decision: PENDING
Decision Date: 24/01/2011

Enforcement Appeals Decisions

36 Crescent Road, Birkdale

APP/M4320/C/10/2134808 - CLB/ENF0386

Domestic - extensions/conservatories/dormers etc

Appeal Type: Written
Lodged Date: 22/09/2010
Decision: UPHELD
Decision Date: 21/01/2011

9 Ormonde Drive, Maghull

APP/M4320/C/10/2137727 - CLB/ENF0389

Breach of conditions

Appeal Type: Written
Lodged Date: 08/10/2010
Decision: QUASHED
Decision Date: 25/01/2011

8 Mount House Road, Formby

APP/M4320/C/10/2137002 -

Fences/Walls/Outbuildings etc.

Appeal Type: Written
Lodged Date: 28/10/2010
Decision: UPHELD
Decision Date: 12/01/2011



Appeal Decisions

Site visit made on 4 January 2011

by David Pinner BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 January 2011

Appeal Ref: APP/M4320/C/10/2137727 & 2137728
9 Ormonde Drive, Liverpool, L31 7AN

- 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 Mr Peter Diamond and Mrs Susan Diamond against an enforcement notice issued by Sefton Metropolitan Borough Council.
 - The notice was issued on 3 September 2010.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey extension and garage to the side of the dwelling house.
 - The requirements of the notice are:
A Demolish the single storey extension and garage to the side of the dwelling house and remove all resultant materials; or
B Construct the single storey side extension and garage in accordance with the approved plans dated 20/01/2004, received by the Planning Department – date stamped 1 March 2004 attached to planning approval Ref: S/2004/0233, granted on 13 April 2004.
 - The period for compliance with the requirements is 3 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
 - An application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
-

Appeal Ref: APP/M4320/A/10/2137720
9 Ormonde Drive, Liverpool, L31 7AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Peter Diamond against the decision of Sefton Metropolitan Borough Council.
 - The application Ref: S/2010/0774, dated 3 May 2010, was refused by notice dated 23 July 2010.
 - The development proposed is the erection of a single storey extension and garage to the side, a conservatory and a dormer extension to the rear of the dwellinghouse, including extending the ridge line and raising the height of the gable wall.
-

Decisions

1. I allow the S174 appeal and direct that the enforcement notice be quashed. I grant planning permission 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 erection of single storey extension and garage to the side of the dwelling house on land at 9 Ormonde Drive, Liverpool, L31 7AN referred to in the notice.

2. I allow the S78 appeal, and grant planning permission for a single storey extension and garage to the side, a conservatory and a dormer extension to the rear of the dwellinghouse, including extending the ridge line and raising the height of the gable wall at 9 Ormonde Drive, Liverpool, L31 7AN in accordance with the terms of the application, Ref: S/2010/0774, dated 3 May 2010.

Ground (a), the deemed application and the S78 appeal

3. The conservatory and dormer extension referred to in the S78 appeal are the same style and size as were approved in the 2004 permission referred to in option B of the requirements of the enforcement notice and are therefore of no concern.
4. The principal issues are the effect of the extension on the character and appearance of the area and its effect on the living conditions of the occupants of the adjacent dwelling as a result of its height and location on the common boundary.
5. Policy MD1 of the Sefton MBC Unitary Development Plan requires house extensions to harmonise with the design of the original dwelling; not to cause significant harm to the character of the area and not to cause significant harm to the amenities of neighbours.
6. The appeal property is a semi-detached bungalow in a suburban residential area that contains a variety of house types and designs. Some have been extended and there is considerable variety in the design and type of extensions. The area has no special architectural quality and is not a conservation area.
7. Looking from the front, the semi-detached pair which includes the appeal property is sandwiched between a similar pair of bungalows to the left and a pair of semi-detached two storey houses to the right. The bungalows have a truncated hipped roof to the side, so the eaves height of the side wall is higher than the eaves height of the front and rear walls. The extension enforced against varies from a permitted extension only insofar as its roof is concerned. The form of the roof has been carried over the extension but the side hip appears more truncated than previously and the side eaves height is greater as a result by about 1 metre. The permitted scheme would have replicated the side eaves height of the original bungalow. However, as construction progressed, it became apparent that there would be inadequate headroom in the room over the garage and so the alterations were made to the roof design.
8. The roof of the extension has been covered in tiles that match the original roof and it blends in very successfully with the original roof. The general angle and pitch of the hipped portion has been retained. The fact that the hipped portion appears more truncated than previously is a feature that is plain to see when looking at it in particular, but which is not an immediately obvious element in the streetscene as a whole. Looking along the row of bungalows towards the semi-detached houses, the raised eaves and higher side wall of the extension guide the eye upwards towards the much higher eaves height of the two storey houses immediately beyond. I acknowledge the differences between the actual and approved design of the extension, but I do not consider that the differences have created a design that is jarring in the streetscene. I conclude that the extension does not significantly harm the character of the area and does not conflict with policy MD1 in that respect.

9. I agree with the appellant and the Council that the extension does not unacceptably overshadow or cause loss of light to the bathroom window or the entrance doorway to the adjacent bungalow. There are no habitable rooms in the adjacent bungalow that have windows or doors that face the extension and so the overbearing and oppressive impact that the extension is said to have could only affect people using the door at the side of the adjacent bungalow. This door is a driveway width from the extension and about 5 metres back from the open frontage of the property. I do not agree that the additional height of the side wall of the extension compared to what was approved makes this approach to the adjacent bungalow like an alleyway. The doorway and the approach to it would be passed through in such a brief period that any marginally greater oppressive impact of the extension as built would be insignificant. I conclude that the extension does not have a significant impact on the amenities of neighbours and does not conflict with policy MD1 in that respect.
10. The enforcement provisions of the Act are not intended to be punitive and it is not illegal to build without planning permission, although a person doing so runs the risk that they might have to take the building down. I have found that the extension as built, although not as originally approved, does not cause unacceptable harm or conflict with the relevant UDP policy. I conclude that it is acceptable.

David C Pinner
Inspector



Appeal Decision

Site visit made on 5 January 2011

by Elizabeth C Ord LLB(Hons) LLM MA DipTUS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 January 2011

Appeal Ref: APP/M4320/D/10/2140819
155 Hart Street, Southport, PR8 6DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr. J. Brookes against the decision of Sefton Metropolitan Borough Council.
 - The application Ref S/2010/1231, dated 1 September 2010, was refused by notice dated 28 October 2010.
 - The development proposed is a two storey extension to the rear of the house.
-

Procedural matter

1. Building work has already commenced to a rear extension, although this could be as a result of planning permission S/2010/0418 being granted in June 2010 for a single storey rear extension. Although I do not have the details of this permission before me, the Council officer's committee report seems to indicate that this extension is similar to the ground floor element of the proposal. Nonetheless, it is unclear whether this work relates to the proposal.

Decision

2. I allow the appeal, and grant planning permission for a two storey extension to the rear of the house at 155 Hart Street, Southport, PR8 6DY in accordance with the terms of the application, Ref S/2010/1231, dated 1 September 2010, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan and three unreferenced plans referred to in the Council's decision notice as plans 1, 2, and 3.
 - 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

Main Issue

- The main issue is the effect of the proposal on the living conditions of neighbouring residential properties by way of outlook and loss of light.

Reasons

Living conditions

3. The appeal site contains a semi-detached house. No. 157 lies adjacent to it and is separated from the appeal dwelling by two driveways. No. 153 comprises the other half of the pair of dwellings. There are existing two storey outriggers to the rears of nos. 155 and 153 with single storey extensions attached, which are built along the same rear building line. The rear elevation of the ground floor part of the extension would extend up to the rear elevation of the existing single storey extensions, and the rear elevation of the first floor element would be set slightly back from this.
4. From no. 157 the first floor element of the proposal would be seen as a protrusion of about 5.3m from the main rear elevation of the appeal dwelling. Whilst the Council states that this does not comply with its Supplementary Planning Guidance (SPG) *House Extensions* of November 2003, which recommends up to a 3m projection, this is only guidance and should not be applied inflexibly.
5. Although there is a kitchen window at no. 157 facing the development, it is separated by the two wide driveways, which would safeguard its relatively open aspect and preserve sufficient light. As the extension would be proportional and not unduly dominant, there would be no material adverse impact on outlook.
6. With respect to no. 153, the Council indicates that the proposed first floor protrusion of 3m from the rear elevation of the outriggers complies with guidance within its SPG. In terms of outlook and light loss, this first floor element would have some affect on light to the rear first floor window in no. 153's outrigger. However, as this is an obscurely glazed bathroom window the impact would be minimal. The proposal would not materially affect the other two rear elevation windows at no. 153, which are both in the main elevation, and are screened by that dwelling's own outrigger and extension.
7. Whilst the occupiers of no. 151 have objected on the grounds of light loss to their dwelling, this property is too far away to be materially affected.
8. For the reasons given, there would be no material impact on the living conditions of neighbouring residents by way of outlook or loss of light. In this respect, the development complies with Policy MD1 of the Sefton Unitary Development Plan, adopted in June 2006, which seeks to safeguard the amenities of neighbours, amongst other things.

Other matters

9. The Council's decision notice refers to the development's layout and the installation of a side window as creating a bedroom with an inadequate outlook. However, it appears from the drawings and the appellant's representations that this side window would be in a bedroom in the existing dwelling and, therefore, not part of the proposed extension. The appellant has not applied for planning permission in respect of this window and, consequently, this matter is not before me for consideration.

10. The occupiers of no. 153 have objected to the size of the proposal on the grounds of it being out of character with the immediate neighbourhood. However, little evidence has been produced to substantiate this claim and, therefore, I give it limited weight. They are also concerned that the rear first floor window of the proposed extension would overlook their back garden. Whilst some overlooking might occur, its effect would be limited and would not justify refusing a proposal which is otherwise acceptable.

Conclusion

11. For the reasons given and having regard to all other matters raised, I conclude that the appeal should be allowed, subject to conditions. Despite the ongoing building works, I have imposed a commencement condition for the avoidance of doubt. I have also imposed a plans condition in the interests of precision and good planning, and a materials condition to safeguard appearance.

Elizabeth C. Ord

INSPECTOR



Appeal Decision

Site visit made on 5 January 2011

by Elizabeth C Ord LLB(Hons) LLM MA DipTUS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 January 2011

Appeal Ref: APP/M4320/D/10/2141339

13 Prestwick Drive, Blundellsands, Liverpool, L23 7XB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr. Ian Mutch against the decision of Sefton Metropolitan Borough Council.
 - The application Ref S/2010/0985, dated 14 July 2010, was refused by notice dated 15 October 2010.
 - The development proposed is described in the application form as *RESUB of S/2010/0542*.
-

Procedural matters

1. Whilst the above description appears on the application form, the proposal is better described in the Council's decision notice as "*Alterations to the roof from a hip to a gable together with the installation of 3 no dormer windows to the front and 3 no to the rear together with an extension to the side/front of the existing garage and a pitched roof over the existing flat roof (Resubmission of S/2010/0542, Withdrawn 19/05/2010)*". Accordingly, I have determined this appeal on the basis of the Council's description.
2. The parties agree that the plans listed in the Council's decision notice are not the plans upon which the application was determined. The correct plans are listed within Condition no. 2 below.

Decision

3. I allow the appeal, and grant planning permission for alterations to the roof from a hip to a gable together with the installation of 3 no dormer windows to the front and 3 no to the rear together with an extension to the side/front of the existing garage and a pitched roof over the existing flat roof at 13 Prestwick Drive, Blundellsands, Liverpool, L23 7XB in accordance with the terms of the application, Ref S/2010/0985, dated 14 July 2010, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 935/01 A, 935/02 I, 935/03 K, 935/05, and 935/06 B.

- 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.
- 4) The bedroom window facing no. 15 in the development hereby permitted shall be non opening and fitted with obscured glass, and shall be permanently retained in that condition.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of the occupiers of no. 15 Prestwick Drive in terms of outlook and overshadowing.

Reasons

5. The appeal site lies in a residential area in a street containing a mixture of house types of varying designs and scales. This sizeable plot contains a detached, hipped, bungalow and a detached, partly hipped side garage, the latter of which lies along the common boundary with no. 15 Prestwick Drive. No. 15 lies to the east of no. 13 and also contains a bungalow, located close to the common boundary.
6. Whilst the proposal would result in a property of considerably greater massing, the ridge line of the main roof would only be raised by 1m and the height of the garage would remain lower than the height of the adjacent bungalow at no. 15. Although the garage would be extended forward by 0.7m and the 1m passageway between the appeal dwelling and the garage would be incorporated into the extension, the overall footprint would not be significantly greater than the existing buildings.
7. Nonetheless, given the change from hip to gable, the development would bring parts of the roof nearer to no. 15, although the side elevations up to eaves height would be no closer. Still, it would have some effect on no. 15's side dining room and lounge windows in terms of outlook and overshadowing, and would cause some overshadowing to its patio.
8. These side windows, however, are secondary windows and outlook would be maintained from the main openings to these rooms which, I understand, are within the rear elevation of the property. In any event, the outlook from these side windows is already onto the blank wall of the existing garage and the proposal would not unduly worsen the situation.
9. Although these side windows are west facing and the main rear windows are north facing, any additional reduction of sunlight, over and above the existing overshadowing, would not be significant. This is particularly so as the rear section of the proposed garage roof would be flat, and overshadowing from the main dwelling would be restricted to an acceptable level by its separation distance. Similarly, overshadowing to the patio area of no. 15 would not be substantially greater than the existing. Consequently, the limited overall impact of the proposal would not justify refusing the application.
10. The Council's Supplementary Planning Guidance *House Extensions*, of November 2003, in considering overshadowing, states that "*As a general rule, blank walls of two-storey extensions should be at least 12m from the habitable room windows of nearby homes.* However, this is only guidance and should not be applied inflexibly. In this instance the gable wall is that of a one and a half storey dormer property, rather than a two storey extension and, therefore,

it is acceptable for the separation distances to be less than 12m, particularly as the impact of the development would not be unreasonable.

11. Therefore, for the reasons given, I find that the proposal would not unduly harm the living conditions of the occupiers of no. 15 Prestwick Drive in terms of outlook or overshadowing. Consequently, it is not contrary to Policies MD1 and DQ1 of the Sefton Unitary Development Plan, adopted in June 2006, which seek to safeguard the amenities of neighbouring occupiers, amongst other things.

Other matters

12. Third party concerns have been raised about overdevelopment resulting in a dwelling out of scale and character with its surroundings. However, given the large plot size and the varied designs of the surrounding properties, including dwellings with front and rear dormers, and two storey houses on a similar scale to the proposal, it would not appear out of character and would blend into the street scene.

Conclusion

13. For the reasons given and taking account of all matters raised, I conclude that the proposal is acceptable and, therefore, the appeal succeeds subject to conditions. Besides the usual commencement condition, I have imposed a plans condition for the avoidance of doubt, a materials condition in the interests of appearance, and an obscure glazing condition to safeguard privacy.

Elizabeth C. Ord

INSPECTOR



Appeal Decision

Site visit made on 22 December 2010

by Richard Clegg BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 January 2011

Appeal Ref: APP/M4320/D/10/2138600
5 Carr Road, Bootle, Merseyside, L20 6EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr T Foster against the decision of Sefton Council.
 - The application Ref S/2010/1031, dated 22 July 2010, was refused by notice dated 23 September 2010.
 - The development proposed is described as 'a first floor gable extension'.
-

Decision

1. I dismiss the appeal.

Procedural matter

2. The proposed development is more clearly described as a first floor side extension, and I have considered the appeal on this basis.
3. Prior to determination of the planning application by the Council, an amended drawing, ref A924.03B, was submitted which shows a hipped roof instead of the gable in the original scheme. The revised drawing was before the Council when it reached its decision on the application¹, and I have, therefore, taken it into account in determining the appeal.

Main Issue

4. I consider that the main issue in this appeal is the effect of the proposed development on the character and appearance of this part of Bootle.

Reasons

5. Carr Road comprises two rows of semi-detached houses. The pairs of houses are positioned relatively close together and are not set back far from the footway. At No 5 there is a single story extension at the side of the house and the first floor extension would be built above this.
6. Policy DQ1 of the Sefton Unitary Development Plan (UDP) requires new development to relate positively to its surroundings, and Policy MD1 stipulates that house extensions should not cause significant harm to the character of the area. More detailed policy on extensions is given in the Supplementary Planning Guidance Note - House Extensions (SPG). Side extensions should have a lower ridge line than the existing dwelling, and where, as here, there is

¹ The notice refusing planning permission identifies the earlier drawing, ref A924.03A, and not the amended scheme, as relating to the Council's decision. However the Council's report refers to and addresses the revised plans, and clearly indicates that the amended scheme was before the Council.

an existing single storey extension which is not set back from the side boundary or the front wall of the house, a first floor extension above it should be set back at least 1.5m.

7. The proposed extension would continue the existing form of the house with no lowering of the ridge line and no set back from the existing front elevation. This position in line with the existing house would emphasise the presence of the extension in the street scene and its erosion of the gap between Nos 5 and 3 Carr Road. In this urban environment, the relatively narrow gaps between the houses provide an important sense of space which the form of the proposed extension would weaken. The proposal would also give rise to the possibility of terracing if a similar extension were built at No 3, and this situation would be at odds with the character of the road. The hipped roof, materials and windows would be consistent with the appearance of the existing house. However, due to its overall form and position, the extension would be out of keeping with its surroundings. I conclude that the proposed development would be significantly damaging to the character and appearance of this part of Bootle, and in this respect it would be contrary to Policies DQ1 and MD1 of the UDP, and to provisions of the SPG on house extensions.
8. On the opposite side of the road at No 6, a two-storey extension has been added at the side of the house without a set back from the front wall or a lowered ridge line. The Council explains that the extension came forward to provide accommodation for a disabled child, and I have read that setting it back would have made that particular scheme unworkable. In this case the appellant wishes to provide accommodation for his adopted son who suffers from autistic spectrum disorder. I appreciate the importance of suitable living space for the appellant's son, but there is nothing before me to indicate that this could not be achieved if a scheme for No 5 were designed in line with the SPG to reduce the impact in the street scene. Accordingly the personal circumstances of the appellant's family do not outweigh the harm which the proposal would cause to the character and appearance of the area. My overall conclusion, having regard to all matters raised, is that the appeal should be dismissed.

Richard Clegg

INSPECTOR



Appeal Decisions

Site visit made on 14 December 2010

by **J Chance** BSc DipTP MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
21 January 2011

Appeal A: APP/M4320/C/10/2134808

Appeal B: APP/M4320/C/10/2134809

Land and buildings at 36 Crescent Road, Birkdale PR8 4SS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Mark Cunningham (Appeal A) and Mrs Lynette Cunningham (Appeal B) against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The Council's reference is CLB/ENF0386.
- The notice was issued on 18 August 2010.
- The breach of planning control as alleged in the notice is without planning permission, within the last four years, erection of a front boundary wall and brick pillars in excess of 1 metre high adjacent to the highway.
- The requirements of the notice are:
Either: A. Remove the brick pillars and wall marked A-B on the attached plan 'B';
Or B. Reduce the height of the brick pillars and wall marked A-B on the attached plan 'B' to a height not in excess of 1 metre from ground level.
- The period for compliance with the requirements is 28 days.
- Appeal A is proceeding on the grounds set out in section 174(2)(a),(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Decisions

1. I dismiss the appeals and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeals on ground (b)

2. This ground is that as a matter of fact the matters alleged in the notice which may give rise to the breach of planning control have not occurred. I saw on my visit that what has been constructed comprises 2 pairs of pillars which are sited close up to the back of the pavement, with a wall between the 2 innermost pillars which curves away from the backs of the pillars to form a straight wall parallel to the back of the pavement just over 1m into the site.
3. The appellants do not dispute that the wall and pillars have been erected. Whether or not they are permitted development is a matter I shall address

under ground (c). Moreover, within the file there are photographs of the wall and pillars provided by the parties. The wall and pillars referred to in the alleged breach clearly exist as a matter of fact.

4. The appeals on ground (b) therefore fail.

The appeals on ground (c)

5. In the appeals on ground (c), the onus is on the appellants to demonstrate that, on the balance of probabilities, the matters alleged in the enforcement notice do not constitute a breach of planning control. The appellants contend that because almost all of the wall is more than 1m from the front boundary and is not over 2m high, it does not require a specific planning permission. The appellants also argue that even though the pillars are not set back to the same extent as the majority of the wall, they are of a similar height to many other pillars in this and neighbouring roads and so do not look out of place and should not be refused planning permission.
6. Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO) permits "The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure". However, limitation A.1(a) says that such development is not permitted if "the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed one metre above ground level". The wall and pillars in question are undoubtedly more than one metre in height and Crescent Road is undoubtedly a highway used by vehicular traffic. The question to be determined is therefore whether the wall and pillars which have been constructed are adjacent to the highway.
7. There is no definition of "adjacent" within the GPDO. The General Development Order before the GPDO used the word "abutting" but the Courts declined to rule that "abutting" equated to touching. In my opinion, what does or does not constitute "adjacent" is a matter of interpretation, with that assessment amounting to a question of fact and degree. While there is clearly a stoned area between the back of the footpath and the straight part of the wall of just over 1m in depth, it does not form a continuous strip across the entire frontage. Moreover, although there are 4 small trees between the wall and the part of the highway designated as the public footpath, there is no continuous physical feature of any significance within that area.
8. I have taken account of the appellants' point that a Council Officer had previously advised that the part of the structure, the subject of the enforcement notice, which is set back into the site by more than 1m from the back of the pavement would not be a problem. I have not been provided with any written evidence to support that viewpoint and generally an Officer's verbal opinion is not binding upon the Council, and it is not binding on me. I take the view in this particular case that, despite the set-back of the main part of the wall, the means of enclosure at issue, which comprises the entire wall and all pillars, is still, as a matter of fact and degree, adjacent to a highway used by vehicular traffic.
9. The development, the subject of the enforcement notice, is in excess of one metre in height, in breach of limitation A.1(a) to Class A of Part 2 of Schedule 2

of the GPDO. As the development does not benefit from permitted development rights and planning permission has not been granted for its construction, a breach of planning control has therefore taken place. As the burden of proof lies with the appellants and this has not been discharged, the appeals on ground (c) must therefore fail.

The appeal on ground (a)

10. The main issues are the effect on the character and appearance of the streetscene and the effect on highway safety, with particular reference to pedestrian safety.

Effect on the Character and Appearance of the Streetscene

11. I saw that despite the set-back of most of the wall, it still stands out in the streetscene because of its overall height, in conjunction with its imposing design, sturdy construction, type of brick and high pillars. It is higher than any other front boundary wall in this part of Crescent Road. Moreover, because the appeal property is opposite the junction of Burlington Road with Crescent Road, the wall and pillars, the subject of the enforcement notice, are highly visible to drivers and pedestrians travelling along Burlington Road towards the junction, as well as when travelling in both directions along Crescent Road. In those views the wall and pillars appear unacceptably high and dominant, providing, despite the planting and stoned area in front, a hard, stark, solid barrier across the property frontage, albeit with 2 driveway openings, as there are currently no gates.
12. The predominant front boundary treatments in the area are fairly low reddish brick walls, mostly with hedging above or some garden planting behind. There are other similar height walls which are rendered and generally painted cream or white. I saw that the gate pillars tend to be higher than the walls and are often fairly ornate. The pillars are generally sited hard up to the back of the pavement. In comparison to the majority of front boundary treatments, the appeal development appears unduly prominent and out of place in the streetscene because of its uncharacteristic height and overall large scale.
13. I have taken account of the size and scale of the host dwelling and given consideration to whether the planting in front might help to soften the appearance of the structure in the streetscene in the future, possibly assisted in this by the maturing of the planting on the house side of the wall. Nevertheless, what has been constructed still appears disproportionately high and out of scale with the host building at the present time and will continue to do so into the future even after full establishment of the existing planting. I accept that the decorative coursing towards the top helps slightly to break up the sheer mass and bulk, but it still does not overcome the sheer height of the structure.
14. I have had regard to the appellants' contention that as the bricks weather they will become more toned down in terms of their colouring and contrasting effect. However, while I accept that the brickwork is not identical to the brick of the house, I consider that it is not unacceptably different. Furthermore, given the variety of construction materials for the front boundary walls in the general vicinity, I find that it is the height and scale of the appeal property's front

boundary treatment, rather than the materials, which make it unacceptably obtrusive in the streetscene.

15. I acknowledge the appellants' point that the wall was constructed at its particular height in order to prevent headlight nuisance from vehicles travelling on Burlington Road towards the junction. I have noted the appellants' comments on the need for safety, security and privacy for the family, and I have been made aware of actual past security incidents. Moreover, I understand that the pillars have been designed to take the weight of substantial gates. Nevertheless, concerns about headlight nuisance and security and privacy are still not considerations that would outweigh the visual harm to the streetscene that I have identified. Furthermore, notwithstanding the appellants' points that the property is neither listed nor in a conservation area, national policy objectives require that design which is inappropriate in its context or which fails to take the opportunities available for improving the character and quality of an area and the way it functions should not be accepted. I consider that what has been constructed constitutes poor design which harms the character and appearance of the surrounding locality.
16. The appellants have suggested different options for reducing the height of the parts of the wall adjacent to the pillars and the height of the pillars, or moving the pillars and curved wall sections back into the site in line with the straight part of the inset wall. However, these would still not bring about a reduction in height of the main length of wall and so would not be sufficient to satisfactorily overcome the detrimental impact of the wall on its surroundings. Consequently, even though I could impose planning conditions to require modification of the wall and/or pillars in the ways suggested, neither of the indicated options would overcome the identified visual harm to the streetscene.
17. I have also given consideration to the appellants' offer of further planting in front of and behind the wall. However, it would take time for any such additional planting to become established. Furthermore, if such planting were to effectively screen the main bulk of the wall, it would be likely to be fairly intimidating and overpowering for passers-by and would not, in any event, screen the pillars and any future gates. Consequently, I find that this would not satisfactorily overcome the adverse impact of the wall and pillars on the character and appearance of its surroundings. While I have given thought to the conditions suggested by the Council, any rendering and painting of the wall and piers would, similarly, not adequately address the detrimental visual impact resulting from the sheer scale and height of the structure being enforced against.
18. The appellants have referred me to other high walls which have been permitted by the Council in Selworthy Road. However, that road has a different character from Crescent Road, with the properties themselves generally on a large scale and many of the front boundary treatments being characteristically high. Moreover, the presence of such walls elsewhere does not justify allowing the retention of this development which is out of character and visually harmful to its surroundings.
19. I conclude on this issue that the development attacked by the notice has an unacceptably adverse impact on the character and appearance of the streetscene. As such, this is contrary to criterion (ii) of principle (b) of Policy

CS3 of the Sefton MBC Unitary Development Plan 2006 (UDP). In addition, since it does not relate positively to the character and form of the surroundings it is in conflict with part (c) of UDP Policy DQ1. Furthermore, in the sense that the front boundary enclosure could be considered as an extension to the built form of the house, the development is contrary to criterion (d) of Policy MD1 of the UDP. I also find the appeal development to be in conflict with advice in the Council's Supplementary Planning Guidance in Sefton entitled "House Extensions" because it fails to take account of the character of the area and the scale and design of front boundary treatments on surrounding properties.

Effect on Highway Safety

20. The Council considers that the wall and piers restrict the visibility of drivers leaving the property, so causing danger to passing pedestrians. However, many of the nearby properties on this part of Crescent Road have high gate pillars on either side of their driveway access points and the prevalence of hedges above many of the front walls further impedes visibility of the occupiers when emerging from their driveways. While the gate pillars at the appeal property will impede the visibility of drivers emerging from the driveways to a certain extent, both of the access points are substantially wider than the majority of other driveway access points along this stretch of Crescent Road. This will marginally assist in providing improved visibility of pedestrians. Moreover, I note the appellants' offer to re-site the pillars further back into the site, which could be required by condition, which would, in my opinion, further improve pedestrian safety.
21. As such, I find that the front boundary treatment being enforced against is not significantly worse in terms of its effect on highway safety than the majority of other properties in the vicinity and is less hazardous than at certain nearby properties. Consequently, I find no serious conflict with relevant development plan policies.
22. The Council has also raised the matter of security issues being created for passers-by. However, re-siting of the pillars or reducing the height of the pillars would, in my view, assist in overcoming any such perception, which will be no worse than with the high hedging above lower walls at certain other properties.

Conclusion

23. Notwithstanding my considerations with regard to highway safety, I nevertheless find the determining issue to be the unacceptable visual harm which the appeal development causes, in conflict in this respect with UDP Policies CS3, DQ1 and MD1. For the reasons given above, and having regard to all other matters raised, including the appellants' views on the way the Council has behaved which is a matter between the appellants and the Council, I conclude that the appeal should be dismissed. The appeal on ground (a) therefore fails.

The appeals on ground (f)

24. The Council's purpose in issuing the notice is to remedy the breach of planning control which has occurred through removal of the structure or reduction of its height to that which is permitted by virtue of the GPDO.

25. I have already considered the appellants' suggestions for additional landscaping and reducing the height of the pillars and curved sections of wall adjacent to the pillars under the ground (a) appeal. However, I found in my earlier considerations that these measures would not remedy the injury to amenity.
26. I have taken account of the appellants' argument that there was a dilapidated front wall and piers in the past. Nevertheless, since there are no lesser steps that would remedy the injury to amenity and overcome the breach of planning control, the requirements of the notice are not excessive to achieve the purpose of the notice. The appeals on ground (f) fail.

J Chance

INSPECTOR



Appeal Decision

Site visit made on 3 January 2011

by David Pinner BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 January 2011

Appeal Ref: APP/M4320/C/10/2137002

8 Mount House Road, Formby, Liverpool, L37 3LB

- 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 Mr Stuart Pearson against an enforcement notice issued by Sefton Metropolitan Borough Council.
 - The notice was issued on 18 August 2010.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a 1.2 metre mesh fencing extension to the existing boundary fence to increase the height to a maximum of 3 metres.
 - The requirements of the notice are to remove the mesh fencing extension marked A – B on Plan B attached to the enforcement notice.
 - The period for compliance with the requirements is 28 days after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
 - An application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
-

Decision

1. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a) and the deemed application

2. Since this appeal was made, a decision has been issued on an appeal under S78 of the Act against the Council's refusal of planning permission for the fence extension enforced against. Whilst I am not bound by the previous Inspector's decision, there has been no change in circumstances since that decision was made and it is a material consideration to which I attach significant weight.
3. The fence extension is an obvious and unsightly feature, visible from Mount House Close. It has no redeeming qualities and I agree entirely with the previous Inspector that it is harmful to the appearance of the area. I have no reason to disagree with any of his other conclusions and I too conclude that planning permission should not be granted for it. The appeal therefore fails.

David C Pinner
Inspector