

## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 19/02/15

gan **Richard E. Jenkins BA (Hons) MSc MRTPI**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 13 Ebrill 2015

## Appeal Decision

Site visit made on 19/02/15

by **Richard E. Jenkins BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Date: 13 April 2015

**Appeal Ref: APP/B6855/C/14/2226576**

**Site address: 47 Southgate Road, Southgate, Swansea, SA3 2DA**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- 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 Mrs Claire Henson against an enforcement notice issued by the City and County of Swansea Council.
- The Council's reference is ENF14/0006.
- The notice was issued on 11 September 2014.
- The breach of planning control as alleged in the notice is without the required planning permission, operational development in the form of the erection of a front boundary wall in the approximate position marked with a blue line on the enclosed Plan.
- The requirements of the notice are to: i) Demolish the wall; and ii) Remove from the land all building materials and/or rubble arising from compliance with i) above.
- The period for compliance with the requirements is 28 days from the date in which the Enforcement Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (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 application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

## Decision

1. The appeal is allowed under grounds (f) and (g), and the Enforcement Notice is varied by:
  - the deletion of the requirement set out under Section 5 of the Notice (*'What you are required to do'*) in its entirety, and its substitution with the following text: *"(i) Either: (a) Reduce the height of the wall so that the resulting structure constitutes permitted development under Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended for Wales; OR (b) Demolish the wall. (ii) Remove from the land all building materials and/or rubble arising from compliance with either (a) or (b) above"*; and by
  - the deletion of "28 days" (as referred to in Section 6: *The Time for Compliance*) and its substitution with "2 months".
2. Subject to these variations the enforcement notice is upheld.

## **Preliminary Matters**

3. The appeal form indicates that the appeal should proceed on the grounds set out in section 174 (2) (a), (f) and (g) of the aforementioned Act. However, S.177(5A) of the same Act provides that, if the correct fees are unpaid within the stipulated period, then the ground (a) appeal and the deemed planning application which only applies when that ground is pleaded, will lapse. Since the prescribed fee has not been paid here, and the circumstances of the case do not make a ground (a) appeal fee exempt, I have determined the appeal on the basis of grounds (f) and (g) only.
4. In its Appeal Statement, the Council has clarified that, in error, it has not made reference to the unauthorised gates in the Enforcement Notice. As such, it has been requested that, should the Enforcement Notice be upheld, the gates also be included within the alleged breach and, therefore, be required to be removed from the land. However, such a variation would enlarge the scope of the requirements, meaning that the appellant could potentially end up in a worse position than if there had been no appeal at all. As such, whilst I acknowledge that the appellant has been given the opportunity to comment on the Council's Appeal Statement, no comments have been received and, with the principles of natural justice in mind, I do not consider it appropriate to vary the Enforcement Notice to incorporate the gates. I am satisfied that the Council are not prejudiced in this regard given that the opportunity remains for a separate Enforcement Notice to be issued, specifically in relation to this alleged breach of planning control.

## ***Appeal under Ground (f)***

5. The Enforcement Notice relates to a front boundary wall that has been erected using a dark grey brick. It stands at approximately 0.9 metres at its lowest height, but its height varies due to changes in ground level along its length. It incorporates larger piers that stand around 1.8 metres high and incorporates laurel planting that acts as a screen above the lower sections of the wall. The reason for issuing the notice concerns the effect of the boundary wall on the character and appearance of the street scene. The appellant contests the requirements of the Notice, contending that the steps required by the Notice exceed what is necessary to remedy the breach of planning control. Specifically, the appellant has submitted that a reduction in height to a level that does not require planning consent would be a more reasonable remedy to the breach.
6. I recognise that, if any of the limitations of permitted development rights are exceeded, as is the situation in this case, then the whole development is unlawful, not just that element in excess of the permitted development rights. Nevertheless, the existence of permitted development rights may represent a fall-back position which is an important material consideration, particularly in appeals such as those submitted under Section 174(2)(f), where there is a reasonable likelihood that the permitted development rights would be implemented should the enforcement notice be upheld.
7. Within this context, I consider there to be a real possibility that the fall back position would be implemented. The Council does not contend that permitted development rights to erect a wall of lesser height do not exist here, and the result of such a fall-back position would not be materially different to the situation should the existing wall be reduced in height to that permissible under permitted development rights. As such, I see no purpose in requiring the demolition of the wall in its entirety and the removal of all of the materials from the land, only for a lower wall which would not

require planning permission to be immediately reconstructed. In arriving at this view, I bear in mind that the enforcement process should be remedial rather than punitive.

8. In this regard, I consider the requirements of the Notice to go beyond remedying the breach and, therefore, be excessive. To rectify this, I consider it wholly necessary for the requirements of the Notice to include the option of reducing the height of those elements of the wall to the level that would be permissible under permitted development rights afforded under Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended for Wales.
9. I acknowledge that the Council has raised concerns over the wider design of the boundary wall and also note that the appellant has offered, in the Grounds of Appeal, an alternative finish to the wall in question. However, for the same reasons as those set out above, I do not consider it appropriate for the Enforcement Notice to prevent something that could otherwise be achieved without planning permission. As such, I do not consider it necessary for the requirements of the Notice to be amended so as to require an alternative choice of surface finish.
10. To this limited extent, the appeal on ground (f) succeeds.

***Appeal under Ground (g)***

11. This ground of appeal is that the time given to comply with the requirements falls short of what should reasonably be allowed. In this case, the Council has given 28 days to comply with the requirements of the notice. The appellant contends that this falls short of what should be reasonably required in light of the need to obtain the necessary quotations and engage someone to carry out the building works and has therefore suggested that a 'sensible programme of works could be agreed with the Council'.
12. In this regard, whilst the appellant's suggested form of words falls somewhat short of the level of precision necessary in an Enforcement Notice, I agree that, in light of the works necessary to remedy the breach, a modest extension to the period of compliance would be reasonable. I acknowledge that the appellant has been well aware of the breach for a considerable amount of time. However, the appellant is entitled to assume success and is therefore entitled to a reasonable period for compliance after the notice takes effect. In this respect, I consider that a period of 2 months would strike an appropriate balance between the competing public and private interests.
13. As such, the appeal under ground (g) also succeeds.

*Richard E Jenkins*

INSPECTOR