

Enforcement Appeal Decision

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Appeal Reference:	2023/E0040
Appeal by:	Mr Charlie Mullin.
Appeal against:	An Enforcement Notice dated 7 February 2024.
Alleged Breach of Planning Control:	Unauthorised wall and pillars.
Location:	Land at 103 Ballyquin Road, Limavady BT49 9EY.
Planning Authority:	Causeway Coast and Glens Borough Council.
EN Reference:	EN/LA01/2022/0038/CA.
Procedure:	Informal Hearing on 31 July 2024.
Decision by:	Commissioner Mandy Jones, dated 7 August 2024.

Grounds of Appeal

1. The appeal was brought on Grounds (c), (a) and (f) as set out in Section 143 (3) of the Planning Act (Northern Ireland) 2011. There is a deemed application by virtue of Section 145 (5).

Ground (c) that the matters do not constitute a breach of planning control.

2. Section 23 of the Planning Act (Northern Ireland) 2011 defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change of use in the buildings or other land. Section 24 (1) of the Act states that planning permission is required for the carrying out of any development of land. The 'wall and pillars' as cited as the breach of planning control, are operational development in accordance with Section 23.
3. The appellant argued that there is no material difference between the wall and pillars as they are now, and planning approval LA01/2022/0493/F. It was argued that the gates, the four pillars adjacent to the gates and the pillar at the northern end are the same height. There are only minor differences (less than 205mm) in the height of the copings and the retention of the 7 pillar caps. As such, it should be regarded as 'de minimis'.
4. Planning approval LA/2022/0493/F was issued on 7 November 2022. It is clear to me that on comparison of the approved elevation drawings and the site photograph taken on 7 February 2024, (submitted by the Council) on the date of the EN that the wall and pillars which benefit from planning permission are not the same as the wall and pillars on which the notice was framed. As the development subject of the EN does not have planning permission, the appeal on ground (c) fails.

Ground (a) and the deemed application.

5. The main issues are whether the scale, massing and design of the wall and pillars would be sympathetic with the existing property and whether it would detract from the appearance and character of the surrounding area.
6. Section 145 (4) of the Planning Act (Northern Ireland) 2011 requires the Commission in dealing with a deemed application to have regard to the local development plan (LDP), so far as material to the subject matter of the EN, and to any other material considerations. Section 6 (4) states that where regard is to be had to the development plan, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.
7. The Northern Area Plan (NAP) 2016 operates as the LDP for the area in which the deemed appeal site is located. The appeal site is located in the countryside and it is not within any zonings or designations.
8. Overarching regional policy is provided by the Strategic Planning Policy Statement for Northern Ireland (SPPS). It sets out transitional arrangements which will operate until a local authority has adopted a Plan Strategy (PS) for the whole area. No PS has been adopted for this Council area. The SPPS retains certain existing planning policy statements including Planning Policy Statement 7 (Addendum) – Residential Extensions and Alterations (PPS 7 Addendum) during the transitional period. The SPPS sets out transitional arrangements to be followed in the event of a conflict between the SPPS and any retained policy. Any conflict between the SPPS and any retained policy under the transitional arrangements must be resolved in favour of the provisions within the SPPS. No conflict arises between the provisions of the SPPS and retained policy within PPS 7 Addendum, in so far as it relates to the deemed appeal proposal.
9. The Preamble to PPS 7 Addendum states that proposals for an outbuilding or other built development ancillary to a residential property will also be considered under the provisions of this Addendum. Policy EXT 1 – Residential Extensions and alterations states that planning permission will be granted for a proposal to extend or alter a residential property where all of a number of criteria are met. The Council maintain that the deemed proposal fails criterion (a) which requires that the scale, massing, design and external materials of the proposal are sympathetic with the built form and appearance of the existing property and will not detract from the appearance and character of the surrounding area. The justification and amplification states that the guidance set out in Annex A will be taken into account.
10. The deemed application is defined by the alleged breach of planning control, which is ‘walls and pillars’ on the date of the service of the EN, which was 7 February 2024. However, I note that what was on the ground on 7 February 2024 and in July 2024 - at the time of the hearing - is different. Photographs were submitted by the Council of the wall and pillars insitu in February 2024 and July 2024.

11. The appellant confirmed that works to reduce the height of the wall and pillars were carried out around March 2024 (after the service of the EN). The alteration works included the reduction in the height of the pillars along its length and the repositioning of the pillar caps at a lower level.
12. The Commission does not have the power to grant planning permission for any future development. The deemed application can only relate to what was on the ground on the date of the service of the EN (7 February 2024). At the hearing, the appellant confirmed that they did not wish to pursue the deemed application for what was on the site on 7 February 2024, but rather what is currently on site (July 2024).
13. The Council were content that I considered the walls and pillars which are currently on the deemed appeal site (July 2024). Given there is no dispute between the parties and that the alleged breach is simply described in the EN as 'wall and pillars' my considerations of the deemed application will be based on the development currently on the ground, as it falls within the scope of the EN and is not proposed future development. In this scenario, the Council also considered the reduced scheme to be unacceptable as it does not comply with policy.
14. I note the differences between approval LA/2022/0493/F and the development currently on site (July 2024) as demonstrated on drg no PL 03 are:
 - Four pillars at entrance and gate exactly the same;
 - First section of wall: 78mm lower in approval LA/2022/0493/F;
 - Second section: 28mm;
 - Third section: same;
 - Fourth section: 60mm;
 - Fifth section: 141mm;
 - Sixth section: 130mm;
 - Seventh section: 205mm;
 - Eighth section: 205 mm;
 - Capped pillars.
15. It is common case that a wall and pillars of the proportions set out in planning approval LA/2022/0493/F have been accepted by the Council. The appellant asserts that the key question is whether the differences between the approved wall and the current wall have such an unacceptable impact upon rural character as to cause material harm.
16. The Council identified critical views when travelling in both directions along the Ballyquin Road. Ballyquin Road is a particularly fast stretch of road with a speed limit of 60mph. No 103 is a substantial two storey dwelling within an extensive roadside plot and is set back from the road. The immediate and wider setting is rural in character and the roadside boundaries on this part of Ballyquin Road are defined with hedgerows, agricultural fences and the occasional domestic wall (1m in height). The Council considered that the design and scale of the wall with its tall ornate pillars is suburban in style and out of character at this location. It was

argued that the wall does not complement the existing dwelling or respect its setting.

17. The existing wall and pillars are of a simple design with a grey rendered finish (to match the existing dwelling) and the pillars have concrete caps. I would not consider the pillars to be ornate in presentation. The garden level to the rear of the wall ranges from 700mm to 1.5m above the level of the footpath and roadside verge and an indigenous hedge is planted to the rear of the wall within the garden and is maturing.
18. The starting point is the extant planning approval and I consider the differences between it and the wall and pillars, as built to be insignificant. In visual terms given the displaced relationship between the existing dwelling and the wall, the alignment and speed of traffic on the road, the oblique nature of views, the simple design and finishes of the wall and pillars with the maturing backdrop of vegetation I consider that the scale, massing and design would not detract from the built form and appearance of the host property. Neither would it detract from the appearance and character of this rural area. The Council's deemed reason for refusal has not been sustained and the ground (a) appeal succeeds.

The Decision is as follows:

- **The appeal on ground (c) fails;**
- **The appeal on ground (a) succeeds and planning permission is granted.**

The Enforcement Notice is quashed.

This approval relates to drg no. PL.03.C (Elevation no 2 – Existing Elevation to Ballyquin Road) by Kevin Cartin Architects.

COMMISSIONER MANDY JONES

2023/E0040

List of Documents

Planning Authority: ‘A’ Statement of Case

Appellant: ‘B’ Statement of Case

Appearances at Hearing

Planning Authority: Mr Ciaran Rodgers *
(Causeway Coast and Glens Borough Council)

Appellant: Mr Kevin Cartin - Architect
Mr David Donaldson
(Donaldson Planning)

* Denotes attended remotely

