
Appeal Decision

Unaccompanied site visit made on 13 September 2016

by Felix Bourne BA(Hons) LARTPI Solicitor

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

Decision date: 13 October 2016

Appeal ref: APP/L5810/C/16/3147320

Land and property known as 91 Wyatt Drive, London, SW13 8AN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Richmond Upon Thames London Borough Council.
- The appeal is made by Mr Valentin Buyanovsky.
- The notice was issued on 25 February 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of metal railings, pedestrian gate and sliding driveway gate at the front and side of the Land ("the Boundary Treatments").
- The requirements of the notice are to (1) remove the Boundary Treatments from the Land; and (2) make good any damage done and remove any material / debris from the Land caused as a result of compliance with step (1) above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal on ground (c) is dismissed but the appeal on ground (a) is allowed and conditional planning permission is granted. The enforcement notice is quashed.

The appeal on ground (c)

1. Ground (c) is the relevant ground of appeal where an appellant wishes to contend that the matters alleged in the Notice do not constitute a breach of planning control. It is one of what are termed the 'legal' grounds of appeal against an enforcement notice. With such grounds the burden of proof lies with the appellant to make out his or her case, the relevant test of the evidence being the balance of probability.
2. The appellant argues that the railings erected to either side of the property, and which are around 1.65 metres in height, are permitted development by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), as they are not adjacent to a highway used by vehicular traffic. The same argument is made in relation to the front railings, driveway gate and pedestrian gate. These are also around 1.65 metres in height, but are also contended not to be adjacent to a highway used by vehicular traffic in that, whilst they run parallel to the highway, they are over 2.2 metres away from the nearest edge of the road.

3. "Adjacent to" is not defined in the GPDO: however, following case law, it is generally accepted that a means of enclosure does not have to actually touch the edge of the highway to be considered adjacent. It is a matter of fact and degree depending on the circumstances of the case. Even if the pavements were not part of the highway I take the view that, as a matter of fact and degree, the fence running parallel to the highway, is adjacent to it. However, the appellant has not presented evidence to indicate that the pavements are other than part of the highway. Whilst I have also considered the argument made in relation to the railings to either side, the development appears to have been conceived as a whole and should be viewed in that way.
4. In the circumstances the appellant has failed to prove that, on the balance of probability, all or part of the development did not constitute a breach of planning control and the appeal on ground (c) must therefore fail.

The appeal on ground (a) and the deemed planning application

5. Having travelled by public transport I had the opportunity to walk through a large part of the Village and therefore to take note of the variety of boundary treatments both in the immediate vicinity and in the wider area. The Council are quite right to seek to maintain the special ambience that has been achieved there. However, it is common ground that black metal railings are appropriate in terms of materials: it is the height, design and location which the Council consider renders the development a visually intrusive, dominant and unneighbourly form of development, detrimental to the character and appearance of the host property and the area of which they form part.
6. I agree with that assessment to a large degree. The absence of the low walls, and piers, which are coupled with railings to form boundary treatments on parts of the Village, means that the development is not physically bulky. However, it also results in a lack of variety and this, coupled with its height, gives rise to a stark appearance which, as the Council indicate, and notwithstanding the appellant's submissions, is currently detrimental to the character of both the appeal property and the wider area. However, I have borne in mind other boundary treatments nearby, though noting that two were approved prior to the adoption of the current policies. I also concur with the general observations of Worcester City Council with regard to the ability of hedges to create effective secure barriers as well as decorative ones. In this case I believe that the current development could be rendered acceptable were conditions imposed requiring the planting and maintenance of a hedge alongside the railings, and the railings and gates to be maintained in their existing colour. This would give the development the softer, more natural, appearance that is needed in this sensitive location. It would then be consistent with the aims and objectives of the Local Plan, including Policy CP7 of the Core Strategy (2009), and Policy DMDC1 of the Development Management Plan (2011), as well as with those of the Supplementary Planning Document 'Barnes Village Planning Guidance'.
7. Permission will therefore be granted, including in relation to the deemed application, but in each case subject to two conditions. The appeal on ground (a) therefore succeeds, rendering it unnecessary to consider the ground (f) appeal.

Formal decision

8. The appeal on ground (c) is dismissed but that on ground (a) is allowed and planning permission is granted, including in relation to the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the metal railings, pedestrian gate and sliding driveway gate, erected at the front and sides of 91 Wyatt Drive, London, SW13 8AN, in each case subject to the following conditions:

(1) The colour of the metal railings, pedestrian gate and sliding driveway gate shall not be changed without the written approval of the local planning authority.

(2) The metal railings, pedestrian gate and sliding driveway gate subject of this permission shall be removed, and the site restored to its condition prior to the development taking place, within six months of the failure to meet any of the following requirements:

- a. Within two months of the date of this permission full details of a scheme of landscaping shall be submitted in writing to the local planning authority. These shall include details of a hedge to be planted alongside the railings, including species and precise position, together with a timetable for implementation, and provision for the replacement of any planting that dies, or becomes diseased. Details shall also set out proposals for the subsequent maintenance of the hedge, including maximum and minimum heights.
- b. Within five months of the date of this decision, the submitted scheme shall have been approved by the local planning authority (the approved scheme) or, if the local planning authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as valid by, the Secretary of State.
- c. If an appeal is made pursuant to (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- d. The approved scheme shall have been implemented in accordance with the approved timetable.

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INSPECTOR