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## Appeal Decision

Site visit made on 20 September 2016

**by L J O'Brien BA (Hons) MA**

**a person appointed by the Secretary of State for Communities and Local Government**

**Decision date: 27 October 2016**

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**Appeal A Ref: APP/T5720/C/16/3149319**

**Appeal B Ref: APP/T5720/C/16/3149320**

**The land and property known as 39 Borough Road, Mitcham, CR4 3DX shown edged red on the plan attached to the enforcement notice ("the Premises").**

- 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 Artur Slusarz (Appeal A - 3149319) and Mrs Jana Slusarz (Appeal B - 3149320) against an enforcement notice issued by the Council of the London Borough of Merton.
  - The enforcement notice, numbered 15/E0332, was issued on 15 April 2016.
  - The breach of planning control as alleged in the notice is "without planning permission the erection of a boundary timber fence the 'Unauthorised Fence' at the front of the Premises".
  - The requirements of the notice are "5. a) Demolish the Unauthorised Fence, b) Remove all resultant debris from the premises as a result of the above compliance with the requirement of step 5. a) above".
  - The period for compliance with the requirements is three calendar months after the notice takes effect.
  - The appeals were made on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid for Appeal A within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does fall to be considered. The prescribed fees for Appeal B, however, have not been paid and that appeal has consequently lapsed.
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### Procedural Matter

1. The prescribed fees have been paid by Mr Artur Slusarz for Appeal A (3149319) within the specified period and consequently I shall consider the application for planning permission deemed to have been made under section 177(5) of the Act as amended. The prescribed fees for Appeal B (3149320) which is running in Mrs Jana Slusarz's name, however, have not been paid. That appeal has consequently lapsed and I take no action on it.

### Decision on Appeal A

2. The appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### Main Issues

3. The main issues are the effect of the development on the character and appearance of the area, and whether a refusal of planning permission in the

circumstances of this case would be compatible with the provisions of the Human Rights Act 1998.

## **Reasons**

4. Borough Road is a "T-shaped" residential cul-de-sac. No. 39, the appeal property, occupies a large corner plot at the T-junction and has a substantial garden area surrounding the house. Boundary treatments in the area are characterised by low-level vegetation, fencing or walls surrounding reasonably large garden areas. These open garden areas, particularly at the corner plots, give the area a feeling of spaciousness and add an element of greenery to its character and appearance.
5. A fence measuring approximately 1.95m in height has been constructed around the garden area to the front and side of No. 39 leaving only a small, open driveway area immediately in front of the property. The large fence has the effect of visually enclosing the previously open frontage of the appeal site. The impact of this enclosure is magnified by its prominent location and the consequent loss of openness and views across the corner into the rest of the road.
6. Furthermore, the vast expanse of timber appears stark and discordant when viewed in the context of surrounding boundary treatments which, whilst varied, are all far lower in height. Many of the other boundary treatments also offer a degree of permeability and a number are softened by surrounding planting. Despite the lack of objections from neighbours, I therefore consider that the fence is an incongruous and visually intrusive addition to the street scene which adversely affects the character and appearance of the area.
7. For the reasons outlined above, the development does not comply with Policy CS 14 of the London Borough of Merton LDF Core Planning Strategy (CS), adopted July 2011 and Policy DM D2 of the London Borough of Merton Sites and Policies Plan and Policies Map (SPP), adopted July 2014. Amongst other things, these policies seek to ensure that all new development relates positively and appropriately to the surrounding area. The development also fails to accord with Policies 7.4 and 7.6 of the London Plan, July 2011 which expect development to have regard to existing spaces and streets, comprise details and materials that complement the character of the area and integrate well with surrounding streets.
8. As enshrined in the Human Rights Act 1998, Article 8 of the European Convention on Human Rights states that everyone has the right to respect for his private and family life and his home and Article 1 of the First Protocol entitles every person to the peaceful enjoyment of his property. However, whilst I sympathise with the appellant's desire to protect his home and family, the majority of these aims could be achieved by an alternative boundary treatment. Furthermore, the rights under Article 8 and Article 1 of the First Protocol are qualified rights. Whilst enforcement action interferes with those rights to some degree, that interference is in accordance with the law, and necessary in the public interest, to remove the unacceptable harm caused to the character and appearance of the area by the development. The requirement to demolish the fence is proportionate and the minimum necessary to overcome the harm identified, such that there is no violation of the appellant's human rights.

## **Other Matters**

9. I note the Council's concerns regarding the impact of the fence on the outlook of surrounding properties. Whilst I acknowledge the negative effect the fence has on the character of the area I consider that, due to their set-back from the road, surrounding properties are sufficiently distant from the appeal site so as not to unduly diminish their living conditions in this respect. As such, I do not find any conflict with SPP Policy DM D2 insofar as it relates to protecting living conditions at existing developments from visual intrusion.
10. Whilst not in itself a main issue in this case; I do, however, concur with the Council's view that, in blocking views across the corner, the fence can be considered to minimise casual surveillance opportunities and impact negatively on the safety of the area. In this respect I also find conflict with the aspect of CS Policy CS 14 and SPP Policy DM D2 which seek to enhance community safety.
11. During my time on site I visited a number of other fences which the appellant considered to be similar to that present at No. 39. The majority of these fences, whilst nearby, are not in the immediate vicinity of the appeal site and are situated within different contexts. The other examples also vary in terms of their size, siting and materials. As such, the other examples are not directly comparable to the fence at No. 39. In any event, I am not aware of the details surrounding those fences and, moreover, each case must be treated on its own merits.

## **Conclusion**

12. Having regard to my conclusions on the main issues and all other matters raised, I am satisfied that the appeal on ground (a) should not succeed and the deemed application for planning permission should be refused.

*Laura O'Brien*

Appointed person