

Appeal Decision

Site visit made on 17 October 2016

by L J O'Brien BA (Hons) MA

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

Decision date: 15 November 2016

Appeal Ref: APP/H5390/C/16/3146871
45 Hilary Road, London, W12 0QA

- 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 Renato Rosa against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
 - The enforcement notice was issued on 8th February 2016.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a 2m high front boundary wall.
 - The requirements of the notice are "a. remove from the land the front boundary wall b. remove all materials associated with the remedial works front the land."
 - The period for compliance with the requirements is two months from the date on which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 falls to be considered.
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Decision

1. It is directed that the Enforcement Notice is varied by the deletion from paragraph 4. b. of the word "front" and the substitution of the word "from" and the deletion of the words "two (2)" from paragraph 5. Time for Compliance and the substitution of the words "four (4)". Subject to these variations the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Preliminary Matter

2. I have corrected a minor and obvious typographical error in the enforcement notice. This does not change the substance of the requirements or allegations contained in the notice and as such there would be no injustice in making this minor amendment.

Main Issue

3. The main issue is the effect of the front boundary wall on the character and appearance of the area; including whether the development would preserve or enhance the character or appearance of the Old Oak and Wormholt Conservation Area (CA).

Reasons

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

4. No. 45 Hilary Road is a two-storey property which occupies a corner plot at the junction of Norbroke Street and Hilary Road within the Old Oak and Wormholt Conservation Area (CA). The CA is a 'heritage asset' as defined by the National Planning Policy Framework (NPPF), which seeks to ensure that heritage assets are conserved in a manner appropriate to their significance. Where a development would lead to substantial or less than substantial harm to the significance of an asset, the harm should be weighed against the public benefits. The appeal site occupies a large plot in a prominent location, thus making a positive contribution to the significance of the heritage asset.
5. The area is characterised by a variety of residential dwellings set back from the road behind front garden areas and low level boundary treatments such as hedges and fencing. Whilst the character and appearance of the dwellings themselves does vary, these boundary treatments are recognised in the Wormholt and Old Oak Design Guidelines as a key element of the CA's character. The hedges combine with a number of mature trees and other planting to create an attractive verdant character with the low level boundary treatments facilitating a sense of openness.
6. The front boundary wall is constructed of red brick and stands some 1.8 metres in height with the pillars exceeding this at around 2 metres high. The stark appearance of the boundary wall is not in keeping with the softer, green character and appearance of the street scene. The incongruous nature of the wall is exacerbated by its height and vertical emphasis when viewed in the context of the lower level appearance of nearby boundary treatments. Whilst I acknowledge that the wall is similar in height to the remaining sections of the hedge the materials are such that the appearance is vastly different.
7. I recognise that a significant portion of the hedge remains and that the materials have been chosen so as to reflect materials used elsewhere; the introduction of this expanse of brickwork is, nevertheless, at odds with the prevailing character of the area. The remaining hedge does go some way towards screening the wall from certain viewing angles. Views of the site from Norbroke Street are limited and the wall only becomes visible on approach to the junction with Hilary Road, for example. However, due to the prominence of the plot the wall is readily visible along Hilary Road.
8. The appellant argues that simply removing the wall and not replacing it with anything else, as required by the notice, would be more harmful than the current development. I do not concur with this view. Whilst a gap in the boundary treatment would not be ideal, it would re-introduce a degree of openness to the appeal site and would be significantly less harmful than the wall in situ. Furthermore, the notice does not prevent the replacement of the wall with an alternative boundary treatment.
9. My attention has been drawn to other boundary treatments in the area which the appellant considers to be similar to that present at No. 45. However, the majority of these are of a lower level and appear in a different context to the appeal site. The most directly comparable appears to be a red brick wall and railings at No. 144 Old Oak Road. This wall is, however, lower than that at the appeal site and is also broken up further by railings which allow a degree of permeability not afforded by the expanse of brickwork at No. 45 Hilary Road. In any event, I have not been given precise details surrounding these examples and each case must be treated on its own merits.

10. I have some sympathy with the appellant's desire to secure a degree of privacy. However, I believe that similar benefits in this respect could be achieved by alternative boundary treatments.
11. For the reasons detailed above I consider that, due to its excessive scale and incongruous materials, the development causes harm to the character and appearance of the area and fails to preserve or enhance the character and appearance of the CA. Due to the small scale of the development it causes 'less than substantial harm' to the significance of the heritage asset, but that harm is still sufficient to carry considerable weight against the appeal. There is no public benefit that would outweigh the harm.
12. The front boundary wall consequently fails to accord with the aims of Policy BE1 of the 2011 Core Strategy and Policy DM G7 of the Development Management Local Plan 2013 (LP) which require new development to respect and enhance its townscape context and heritage assets, including conservation areas. The development is also at odds with Policy DM G3 of the LP which requires alterations to existing buildings to maintain a high standard of design which successfully integrates with its surroundings. I also find conflict with Design Policy 50 of the Planning Guidance Supplementary Planning Document 2013 which specifically resists alterations to, or removals of, traditional front boundaries. The development also conflicts with the aims of the NPPF.

The appeal under ground (g)

13. The ground of appeal is that the time given to comply with the requirements of the notice is too short. The Council have given two months. The appellant holds that a period of six months would be a reasonable and practical amount of time to allow for the employment of contractors and the undertaking of the works and believes that a period of two months would put them under unnecessary pressure.
14. I have not been provided with any detailed information explaining why six months would be an appropriate time frame and must balance the needs of the appellant against the public interest of protecting the character and appearance of the area. Given the time of the year and the complications it can present, I believe that a period of four months would strike an acceptable balance between the two conflicting interests. To this limited extent the appeal under ground (g) succeeds.

Conclusion

15. 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. The appeal under ground (g) succeeds to the limited extent described above. I shall uphold the enforcement notice, subject to the variations detailed above and refuse to grant planning permission on the deemed application.

Laura O'Brien

Appointed person