
Appeal Decision

by Alwyn B Nixon BSc MRTPI

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

Decision date: 12 December 2016

Appeal Ref: APP/G5180/C/16/3152736

Land at 11 Dunbar Avenue, Beckenham, BR2 9AA

- 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 St John Coptic Orthodox Church against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice, numbered L15 15/00452/OPDEV, was issued on 2 June 2016.
 - The breach of planning control as alleged in the notice is "without planning permission, a. the installation of six metal posts, to support netting, each post with a height above ground level, of approximately 3.8 metres, located at approximately the points marked "A, B, C, D, E and F" on the plan; and b. the erection of mesh fencing, with a height above ground level of approximately 2.5 metres, incorporating metal fence posts at intervals of approximately 2 to 2.5 metres, following approximately the line highlighted in yellow on the attached plan".
 - The requirements of the notice are 1. Remove the posts referred to in paragraph 3a above; and 2. Reduce the height of the fencing (including fence posts) referred to in paragraph 3b above to a total height not exceeding 2 metres at any point; and 3. Remove the netting referred to in paragraph 3a above.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed in part. The enforcement notice is varied by the deletion of requirement 2 above and the consequential re-numbering of requirement 3 as requirement 2. Subject to these variations the enforcement notice is upheld. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for development already carried out, namely the erection of mesh fencing, with a height above ground level of approximately 2.5 metres, incorporating metal fence posts at intervals of approximately 2 to 2.5 metres, following approximately the line highlighted in yellow on the land shown edged red on the plan annexed to this decision, subject to the following condition:
 - 1) Unless within 2 months of the date of this decision a scheme for the reduction/dampening of noise arising from balls striking the fencing hereby permitted is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 month of the local planning authority's approval, the use of the play area enclosed by the mesh fencing for any ball games shall cease and all equipment and materials brought onto the land for the purposes of such

use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the area enclosed by the mesh fencing for any ball games shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained and maintained for so long as the fencing shall remain.

In the event of a legal challenge to this decision or to a decision made pursuant to the procedure set out in this condition, or an appeal against the local planning authority's refusal or failure within the relevant time limit to approve details submitted for approval pursuant to this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge or appeal has been finally determined.

Procedural Matters

2. A number of residents living close to the site made representations requesting that I view the development from their properties. With the agreement of those present at the site visit, I observed the fencing, posts and netting from within the rear curtilages of 15 Dunbar Avenue and 10 Balmoral Avenue as part of my inspection of the site and surroundings. From these properties I was able also to assess the development's impact on other neighbouring properties located closest to it. I also carried out an unaccompanied inspection of the surrounding environs.

Ground (a) and the Deemed Planning Application

3. St John's Coptic Orthodox Church occupies a substantial building set within a large site and is primarily surrounded by hard surfacing. The building was formerly used as a public house; planning permission ref. 10/00971 permitted a change of use to community hall, meeting rooms and chapel (Class D1). The metal posts, netting and fencing which are the subject of the enforcement notice and appeal enclose a rectangular space in a rear corner of the site. The enclosed area has been laid with artificial turf and is equipped with a set of portable goals.
4. The main issue is the effect of the metal posts, netting and fencing on residential amenity. From the reasons given for issuing the enforcement notice it is plain that the notice is directed at remedying the visual harm which it is contended is caused by the means of enclosure. The notice seeks to secure the removal of the six 3.8m high metal posts and the suspended area of netting which they support, and to reduce the height of the mesh fencing running round all 4 sides of the enclosure to a maximum of 2m in height (ie the maximum height permitted under the provisions of the General Permitted Development Order in this situation and thus not requiring express permission).

5. A number of residents have made submissions raising strong complaint about the consequences for their living conditions of use of the enclosed artificial turfed area for football or similar activity. However, the enforcement notice does not allege any material change of use of the land and does not contain any requirements or restrictions concerning the use of the enclosed area. Nor do the Council's submissions express any view as to whether or not a material change of use has occurred in respect of these matters, or at what point a use previously considered incidental to the authorised use of the site might no longer be considered so because of its frequency, the hours concerned, or its intensity or nature. My determination of the appeal is limited to consideration of the posts, netting and fencing identified in the enforcement notice.
6. In support of its case the Council cites policy BE7 of the Bromley Unitary Development Plan (UDP), adopted in 2006, and the London Plan (adopted in 2011). Policy BE7 specifically concerns railings, boundary walls and other means of enclosure; it resists the erection of high or inappropriate enclosures where such structures would erode the open nature of the area or would adversely impact on local townscape character. It seeks to ensure that new enclosures are appropriate to their context in scale, location and design. Paragraph 9.7 of the UDP reflects the Plan's aim to protect living conditions and the environment of those who live and work within the Borough, seeking to ensure that all new development makes a positive contribution to the area in which it is located. The London Plan policy 7.4 states that development should have regard to the form, function and structure of an area, place or street and the scale mass and orientation of surrounding buildings. In areas of poor or ill-defined character, development should build on the positive elements that can contribute to establishing an enhanced character.
7. The National Planning Policy Framework (NPPF) is a material consideration. It confirms the statutory requirement that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.
8. The rectangular enclosure structure is surrounded on three sides by the rear curtilage areas of dwellings in Dunbar Avenue and Balmoral Avenue. The six metal posts at points A, B, C, D, E, F on the enforcement notice plan are 3.8m high and support netting which forms a roofed cage to prevent footballs escaping the artificial turfed area. The appellant says that the metal posts are slim and that the netting is "virtually invisible". However, the occupants of several properties in Dunbar Avenue, Balmoral Avenue and Eden Park Road complain about the unsightly impact of the netting and supporting poles.
9. At my visit, I observed that the metal posts, netting and mesh fencing are positioned directly adjacent to the rear garden boundary of 13 and 15 Dunbar Avenue and the rear corner of No 17. The height and extent of the metal posts and netting are such that they have an unduly prominent and unsightly appearance, particularly when seen from parts of these adjacent garden areas and against the open sky. Similar views of the upper parts of the metal posts and netting are obtainable from the rear of Nos 8-14 (even) Balmoral Avenue and, to a lesser degree, from Nos 4, 6 and 16; from 41-47 (odd) Dunbar Avenue; and to some extent from 22 Eden Park Road. Although there are small garages behind several of the gardens, the posts and netting are still plainly visible over the tops of these low-level structures.

10. I conclude that the metal posts and the netting that they support combine to create an unsightly means of enclosure that is inappropriate in this context so close to the neighbouring residential garden areas and which adversely affects the rear outlook from the dwellings themselves. These effects are particularly severe in relation to 13, 15 and 17 Dunbar Avenue. The metal posts and netting are not appropriate to their context in scale, location or design, and adversely affect the character of their surroundings and the living conditions of nearby residents. I find that this element of the development conflicts with the thrust and intent of UDP policy BE7 and policy 7.4 of the London Plan.
11. I note that external lighting formerly attached to the metal posts, which gave rise to particularly strong objection from local residents, was voluntarily removed before the enforcement notice was issued. However, this does not alter my conclusion that the remaining posts and netting cause significant visual harm and do not accord with the development plan.
12. I note also the argument that removal of the posts and netting will give rise to a risk of balls straying into neighbouring gardens. I do recognise there could be such a risk, although I make no assumption about how regular an occurrence that might be, since the issue of regulation of the nature and extent of use of the enclosed area is not before me. However, I do not find this a consideration of such weight as to override the visual harm caused by the present structure.
13. Turning to the mesh fencing, this is referred to in the enforcement notice as being approximately 2.5m high and is cited as having a height of 2.4m in the Council's appeal statement. The mesh has a rectangular pattern and a dark green finish. Viewed from outside the site much of the fencing is obscured by solid concrete panel fencing/walling approaching 2m in height. From many of the nearby garden areas it is also largely obscured by intervening garage buildings belonging to those properties. Taking these factors into consideration, and bearing in mind its overall height and the visually permeable nature of the mesh, I do not find that it causes significant visual harm in this location. Having regard to the provisions of the development plan, as outlined above, I conclude that the mesh fence as erected accords with the plan. The appeal on ground (a) therefore succeeds so far as it relates to the mesh fencing referred to in paragraph 3.b of the matters identified in the enforcement notice and the requirement to reduce its height to not exceeding 2 metres.
14. Although not a matter relied on by the Council when issuing the enforcement notice, I have had regard to the representations from a number of local residents about the disturbance and consequent effect on their living conditions caused by the noise of balls striking the mesh fencing. I acknowledge the disturbance and annoyance that such noise might cause. I am conscious that my decision to allow the appeal in part on ground (a) will result in a higher fence remaining than would otherwise have been the case, and that this will give rise to a somewhat greater risk of noise disturbance from balls striking the fence should the enclosed area be used for ball games, due to the greater fence surface area involved and its projection above the top of the adjacent solid fence/wall structure.
15. However, I consider that this issue can be addressed by the imposition of a condition requiring the agreement and implementation of a scheme of sound reduction measures in relation to any use of the enclosed area for ball games,

16. which might include low-noise rebound boards, sound dampeners at mesh attachment points or free hanging baffle nets behind the goal area. The precise details of such measures would be a matter for consideration by the local planning authority in the first instance, and would no doubt have regard to what measures would be proportionate to the nature and extent of use of the enclosed area. In deciding to impose such a condition I express no view as to whether the use of the enclosed area for ball games would be a use requiring planning permission; that is a matter for the Council, having regard to questions of fact and degree. Subject to the imposition of a condition to this effect, I consider the retention of the mesh fencing at its existing height acceptable.
17. The Council has not suggested any conditions in the event that the appeal might be allowed and planning permission granted, in whole or in part. I do not consider that any other conditions are necessary.

Ground (f)

18. The appeal on ground (f) simply points out that the lights previously sited at the top of the poles were removed voluntarily, and states that the current situation should be permitted to remain. This ground of appeal is actually a repetition of ground (a). As I have considered ground (a) fully above, and determined that the appeal should succeed in part on that ground, I do not give ground (f) further consideration.

Overall Conclusion

19. For the reasons given, and having taken account of all matters raised, the appeal on ground (a) fails in part and succeeds in part. I therefore (i) vary the requirements of the enforcement notice and uphold it as so amended, and (ii) grant planning permission on the deemed application so far as it relates to the mesh fence identified at paragraph 3.b of the notice issued by the Council.

Alwyn B Nixon

Inspector



Plan

This is the plan referred to in my decision dated: 12 December 2016

by **Alwyn B Nixon BSc MRTPI**

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