
Appeal Decision

Site visit made on 24 January 2017

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 26 January 2017

Appeal Ref: APP/Z5060/C/16/3146328
40 Goring Gardens, Dagenham, RM8 2AD

- 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 K Djafer against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice, numbered 14/00494/NOPER, was issued on 2 March 2016.
- The breach of planning control as alleged in the notice is "Without planning permission, an erection of a front fence 1.8 metres in height".
- The requirements of the notice are:
 - Remove the front fence.
 - Remove all alterations and fixtures related to unauthorised front fence.
 - Remove all subsequent waste material from the property.
- The period for compliance with the requirements is 1 month after the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(d) 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 also falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Ground (d)

1. The appellant argues that he bought the property from a "Mr and Mrs Ruffell" in January 2015 and that the fence along the frontage either side of the vehicle entrance to the forecourt was finished more than 15 years before the notice was issued and has been there ever since. The Council challenge this assertion and have produced a "Google Streetview" photograph taken in 2008 which shows privet hedges where the present fencing has been erected. This photo also shows a fence set back some distance behind the hedge in line with the original front wall of the house. It seems likely that this fence enclosed the side and rear garden of the property at that time.
2. Where ground (d) is pursued and the lawfulness of the development and immunity from enforcement action is claimed the onus is upon the appellant to show, by the production of sufficiently precise and unambiguous evidence, that on the balance of probability the development in question had been completed 4 years before the notice was issued. In this case the relevant date is 2 March 2012.

3. Apart from the appellant's claim, the only other evidence provided in support is a photograph supplied by the neighbour at 41 Goring Gardens which is said to have been taken at a party in September 2010 which shows a solid fence of about 1.8m high in the background. The Council argue that the fence in question is actually that encloses the garden No.41 and includes part of the existing fence along the front boundary of that property, not No.40. In this respect reference is made to the edges of two sheds shown in the photograph which still exist in the garden of No.41. On my visit I noted that this was so and conclude that the Council's argument appears to be correct and the fence shown in this photograph is not the one that is the subject of the notice. Further factual evidence can be gleaned by examining the design of the fences at the front of Nos. 40 and 41. The fence at the appeal property has a curved top between concrete posts whereas the one that fronts No.41 has a horizontal top as appears in the photograph. This reinforces my finding that the fence shown is not that which exists at No.40 and so it does not assist the appellant.
4. I have also borne in mind that the appellant can only give first-hand evidence of what existed since he first saw the property and subsequently acquired it. No date is given of when he first visited but it is to be assumed that this would be a matter of months before the purchase date in January 2015. It is therefore very unlikely that he can verify what existed on the relevant date – 2 March 2012 – as he would have had no reason to be aware at that time. The people that would have known and could presumably have provided a statement – sworn or otherwise – are the previous owners from whom he bought the property. It is surprising that no such statement or explanation has been sought from them and the absence of anything to verify what existed by way of fencing on 2 March 2012 means that the appellant's claims are not backed up with tangible evidence. It is also likely that sales particulars existed at the time he made the purchase and if so they would be likely to show the front of the property which would reveal what existed on the frontage. Again nothing to this effect has been supplied.
5. Drawing these points together I consider the appellant has not discharged the onus of proof and there is nothing to show that on the balance of probability the fence the subject of the notice was in existence on 2 March 2012. Accordingly there is no success on this ground of appeal.

Deemed planning application

6. Although no appeal of ground (a) was pursued when the appeal forms were submitted, the requisite fee for the deemed planning application was subsequently submitted within the required time period and so this also falls to be considered.
7. I consider that the main issue to address is the impact of the fence on the street scene and the character and appearance of Goring Gardens. I noted that apart from the fence at the appeal property and the one along the frontage of No.41, all the other properties in this cul-de-sac appear to have low boundary features which comprise a mixture walls and fences or in some cases hedges of the type that previously existed at the appeal property. This is the prevailing character and the tall fencing at the appeal property and the neighbour's property (No.41) are unsightly and discordant features which are out-of-keeping with this character and have had a harmful impact on the street scene. They represent intrusive exceptions to the prevailing character.

8. The Council have referred to paragraph 5.9.1 of their Residential Extensions and Alterations Supplementary Planning Document (SPD) which indicates that boundary enclosures which are overbearing or have a material impact on the openness of an area will be considered unacceptable. In this case I find that the fence is overbearing and has harmed openness and there is nothing comparable in this road other than what exists at No.41. On this basis the development is also at odds with the terms of Policies BP8 and BP11 of the Borough Wide Development Policies DPD (March 2011).
9. The Council claim that the fence at No.41 has existed for approximately 10 years which would mean that it is immune from enforcement action. Given my assessment of the boundary features in the rest of Goring Gardens I do not consider that this is a form of development that should be encouraged or repeated and allowing what exists at the appeal property to remain could lead to this outcome, to the further detriment of the street scene and the local environment.
10. I have taken account of the appellant's arguments concerning pollution, safety and security but I do not consider that these matters can only be addressed by the fencing in question. It is clear that the occupiers of other properties in the Gardens have not resorted to erecting this type of fencing which tends to suggest that the claim that it is needed to address these concerns is not made out. I would add that the forecourt of the property appears to be used for parking so the fence as positioned would do nothing to prevent fumes from vehicles parked here entering the property. As regards the side and rear garden it is evident from the Google Streetview photograph that a solid fence of about 1.8m did exist to screen this area and ensure that it was safe and secure. However this was set back behind the former hedge planting which softened its impact and ensured it was not a stark feature in the street scene. It may be that something similar to this could be reinstated but that is a matter between the appellant and the Council.
11. Bringing these points together I find that the fencing has had a harmful impact of the street scene in Goring Gardens and its character and appearance, contrary to the relevant development plan policies and the guidance in the SPD referred to above. Consequently I do not consider that planning permission should be granted for its retention.

Conclusion

12. For these reasons I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Decision

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

N P Freeman

INSPECTOR