
Appeal Decision

Site visit made on 28 February 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 27 March 2017

Appeal A Ref: APP/P4605/C/16/3163354

Appeal B Ref: APP/P4605/C/16/3163355

57 Knightlow Road, Birmingham B17 8PX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Dr A Abdullah and Appeal B is made by Dr N Butt against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice, numbered 2016/0065/ENF, was issued on 17 October 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of a raised patio area in the rear garden.
 - The requirements of the notice are: Demolish the raised patio area in the rear garden, restore the land to its original level and remove all demolished materials from the site.
 - The period for compliance with the requirements is 2 months from the date the notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended and Appeal B is proceeding on ground (f).
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Decision in Relation to Appeal A

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a raised patio area in the rear garden on land at 57 Knightlow Road, Birmingham B17 8PX, referred to in the notice, subject to the following condition:
 - 1) The raised patio hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 2 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 months of the date of this decision a scheme for the erection of boundary fencing to the western and eastern perimeter of the patio shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 10 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
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- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon completion of the approved scheme, boundary fencing shall be retained in perpetuity on the eastern and western boundaries of the patio, in line with the details so approved, and any replacement fencing shall be of the same materials, height and design.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Decision in Relation to Appeal B

2. I take no further action in respect of this appeal.

Procedural Matter

3. Two appellants were named on the appeal form; Dr Abdullah and Dr Butt. In such circumstances it is common practice for the Planning Inspectorate to assign an appeal reference number to each appellant because, in effect, there are two appeals. I have referred to them as Appeal A and Appeal B, as set out in the banner heading above. Where an appeal is made on ground (a) a fee is payable and, in this case, the fee has been paid in relation to Appeal A and not Appeal B. Consequently, Appeal A will proceed on grounds (a) and (f) and Appeal B will proceed on ground (f) alone.

Appeal A on Ground (a)

4. An appeal on ground (a) is made on the basis that planning permission should be granted for the breach of planning control alleged in the notice. I consider that the main issue in the determination of the ground (a) appeal is the effect of the development on the living conditions of the residents of Nos 55 and 61 Knightlow Road, with particular regard to privacy.
5. No. 57 Knightlow Road is a semi-detached dwelling within a pleasant residential suburb. The property has recently been substantially extended following the grant of planning permission, including two-storey and single storey additions to the rear and a large dormer window. That work is now almost complete. Beyond the rear extensions is a large garden which slopes down as it moves away from the house, as do the gardens of adjacent dwellings.
6. Prior to the construction of the rear extensions a raised patio area was in place immediately to the rear of the house, as can be seen from photographs provided by the appellant. The rear extensions have projected out onto the area occupied by the former patio and a new raised patio has been created beyond the extension. Thus, the effect has been to push the rear building line and raised patio further out into the garden. The surface area of the new raised patio sits above the level of the adjacent gardens and, without any mitigation in the form of fencing or other boundary treatment, those using the patio would have unobstructed views into neighbouring gardens and back towards the rear elevations of the houses at either side. Consequently, without mitigation I consider that the development would have a harmful effect on the privacy of neighbouring residents.

7. At the time of my site visit, fencing had been erected along each side of the patio. When measured from the artificial ground level on the appellant's side of the fence, the height was approximately 1.8m but the height would be greater if measured from natural ground level within the neighbouring gardens at each side. Certainly, if measured from natural ground level immediately adjacent the fence would be well in excess of the 2m height restriction for new fences to qualify as 'permitted development' under the terms of Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015. As such, the fencing represents an act of development for which planning permission would be required. The appellant maintains that the fence was erected as a temporary measure to mitigate against complaints regarding overlooking and has suggested that a condition could be attached to any planning permission to secure a more appropriate style of fencing in accordance with details that would need to be submitted to and agreed in writing by the Council.
8. Paragraph 203 of the National Planning Policy Framework (the Framework) is clear that consideration should be given to the use of conditions where their imposition could make an otherwise unacceptable development acceptable in planning terms. That is supported by advice in The Planning Practice Guidance (PPG)¹. Moreover, it seems to me that conditions are often imposed to require acts of mitigation which, in themselves, may require planning permission. Nothing has been presented to suggest that there is any legal reason why a condition to secure boundary fencing should not be considered if it would mitigate the harm caused by the development and meet the six tests outlined at paragraph 206 of the Framework.
9. Moreover, neighbouring residents have commented on the impact of the development with the current fencing in place and I have had regard to those views. Therefore, I am satisfied that no prejudice would arise were I to consider the merits of the suggested condition and that the use of such a condition would be possible having regard to the nature of the breach and the scope of the deemed application under ground (a).
10. Having stood on the patio with the current fencing in place I found that the degree of overlooking into neighbouring gardens was no more than could reasonably be expected in a residential area. The fencing effectively blocks views back towards the living rooms and private space immediately to the rear of neighbouring houses. Whilst some views into the bottom end of the gardens are possible a degree of overlooking between gardens is not uncommon in a residential area and the effect will be lessened in the summer months when vegetation is in full bloom.
11. Moreover, I observed that many houses within the area have raised patio areas in response to the local topography, resulting in a degree of mutual overlooking. The situation at the appeal site is no different to that common pattern and not substantially different to the situation as it existed prior to the rear extension being constructed albeit that the raised patio is now further out into the garden. In order to mitigate the harm by way of overlooking any fence would need to be of a similar height to that which has been erected. Although that is above the height of fencing that may be constructed as permitted development, the dwellings at either side benefit from sizeable gardens and I

¹ Paragraph: 001 Reference ID: 21a-001-20140306

am satisfied that the current fence, or an alternative fence of a similar height, does not/ would not lead to any undue levels of overshadowing or overbearing impact or any significant loss of outlook.

12. The appellant notes that the current fencing was hastily erected and has suggested a condition to secure a more appropriate style of fence, to match adjacent boundaries. Neighbouring residents have also noted that the style of the fence is at odds with adjacent boundary treatments. I concur with those views and a more appropriate style of boundary treatment would help to soften the visual impact and ensure that any fencing assimilates with the character of the area. For that reason, and the need to protect neighbouring privacy, I consider that the suggested condition is necessary in planning terms. In relation to privacy it would be necessary for any condition to stipulate that any fencing is retained in perpetuity, with any replacement fencing being of matching height and design.
13. Given that the development is retrospective the condition would need to provide for an appropriate period of time for the submission of a scheme, which would include details of the proposed fencing and a timetable for implementation, to the Council and a subsequent period to allow for the agreement of those details, including any appeal if details cannot be agreed by the Council. Upon approval, either by the Council or the Secretary of State, the appellant would be required to construct the boundary fencing, in line with the agreed timetable. Given my conclusion that the patio would only be acceptable with fencing in place the condition must also provide for the withdrawal of planning permission and the demolition of the raised patio if any of the timetables are not met.
14. Consequently, subject to the imposition of a suitably worded condition, the effect on neighbouring privacy will be acceptable such that the development would comply with the terms of paragraphs 3.8, 3.10 and 3.14C of the Birmingham Unitary Development Plan (UDP) and one of the core principles of the Framework, set out at paragraph 17, which is that planning should seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

15. I have noted photographs submitted by a neighbouring resident which purportedly show water leaking from the side wall of the raised patio onto the neighbours' land. From the information before me, I cannot be certain of the extent of any run-off or whether it was caused directly by the development at the appeal site. Matters relating to alleged damage to private property are essentially private matters that fall outside of the planning system. The Party Wall Act 1996 provides the legislative and procedural framework that should be followed where works to erect a party wall are proposed. The rights and responsibilities created by that Act operate independently of the planning system and, from the information before me, concerns relating to water run-off and the integrity of the wall are private matters that do not amount to a reason to withhold planning permission.

Conclusion on Ground (a)

16. For the reasons given above, subject to the imposition of a suitably worded condition to secure appropriate boundary fencing, the effect of the

development on the privacy of neighbouring residents will be acceptable. On that basis, and having considered all other matters raised, I conclude that planning permission should be granted, the appeal on ground (a) succeeds, and I shall quash the notice.

The Appeals on Ground (f)

17. Given that I have decided to grant planning permission and quash the notice in relation to Appeal A on ground (a) it is unnecessary for me to consider appeals A or B on ground (f). I shall therefore take no further action on this ground of appeal.

Chris Preston

INSPECTOR