
Appeal Decisions

Site visit made on 20 March 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 19 April 2017

Appeal A and B Refs: APP/N5090/C/16/3149884 & 3149885 Land at 33 - 35 Abercorn Road, London NW7 1JN

- 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 appeals are made by Dr Alex Anzelmo (Appeal A) & Mrs Bruna Anzelmo (Appeal B) against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 5 May 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the construction of a two metre high boundary wall fronting the highway.
 - The requirements of the notice are either:
 1. demolish the front boundary wall
 - or
 2. reduce the front boundary wall and pillars to a height not exceeding one metre from adjacent ground level.
 - The period for compliance with the requirements is three months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/N5090/W/16/3148685 33 Abercorn Road, Mill Hill, London NW7 1JN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Dr Alex Anzelmo against the decision of the Council of the London Borough of Barnet.
 - The application Ref 16/0810/HSE, dated 8 February 2016, was refused by notice dated 5 April 2016.
 - The development proposed is described as rebuilding front of property with pavement boundary walls.
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Summary Decisions: Appeals A and B are dismissed and the enforcement notice is upheld with corrections. Appeal C is dismissed.

Procedural Matters

1. The breach of planning control as alleged in the notice is, without planning permission, the construction of a two metre high boundary wall fronting the highway. As constructed, the majority of the wall is at a height of approximately one metre or less, but with a number of pillars of a greater height. It is therefore apparent that the boundary wall as constructed is not at a height of 2m throughout its length and that only the prominent pillars reach a height of 2 metres. Moreover, there is no mention of these pillars in the breach of planning control that is alleged. I therefore consider that the breach of planning control that alleged in the notice is not accurately described.
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2. The requirements of the notice, which are expressed in the alternative, are either to demolish the front boundary wall or to reduce the front boundary wall and pillars to a height not exceeding one metre from adjacent ground level. It is therefore only the second option that makes reference to the pillars.
3. It follows that there is a mis-match between the breach of planning control as alleged in the notice and the requirements of the notice. It is essential that the breach of planning control as alleged in the notice and the requirements of the notice are internally consistent. I have therefore considered whether the notice should be corrected in this respect.
4. The starting point is the breach of planning control alleged in the notice. This refers to a two metre high boundary wall fronting the highway. The erection of a gate, fence, wall or other means of enclosure is permitted by Article 3, Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the limitations at Class A.1. One of these limitations, at Class A.1(b), is that development is not permitted by Class A if the height of any gate, fence, wall or other means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after carrying out the development, exceed 1 metre above ground level.
5. There is no dispute that the boundary wall with pillars subject to the notice is adjacent to a highway used by vehicular traffic. It therefore appears to me that the breach of planning control alleged in the notice should more properly be described as the erection of a boundary wall with pillars fronting the highway that in part exceeds 1 metre in height. It is established case law that a single development cannot be subdivided into parts that are permitted development and parts that are not. Consequently, even though some parts of the wall may not exceed 1 metre in height, because other parts of it clearly do, the boundary wall as a whole requires planning permission. The appellants have not sought to argue otherwise.
6. In considering whether any injustice would be caused by correcting the notice in this way, I note that the appellants have not expressed any difficulty in understanding what is required of them to comply with the notice as currently worded. The requirements of the notice, which are expressed in the alternative, include an option to reduce the front boundary wall and pillars to a height not exceeding one metre from adjacent ground level. This clearly reflects the limitation at Class A.1(b) referred to above. Correcting the notice would not result in any change in those requirements and would have no practical implications for the appellants. It would be the same development, but simply described differently. I am therefore satisfied that correcting the notice in this way will not cause injustice.
7. Appeal C is submitted in the name of Dr Alex Anzelmo. However, the planning application to which the appeal relates was submitted in the name of Mr Alex English. The Decision Notice issued by the Council was also addressed to Mr Alex English. Because the right of appeal only extends to the original applicant for planning permission, I sought confirmation that the applicant for planning permission and the appellant for this appeal are the same individual. On the basis of the explanation given by the appellant for this disparity, I am satisfied that this is the case and that Dr Alex Anzelmo enjoys the right of appeal.

8. The application site for the planning application now subject to Appeal C is described on the application form as 33 Abercorn Road, and accordingly I have taken that as the appeal site address in the banner above. However, the 'red line' shown on the location plan submitted with the planning application clearly encompasses both Nos 33 and 35 Abercorn Road. The Council's formal Decision Notice also refers to Nos 33 and 35 Abercorn Road. I am therefore satisfied that the application relates to both properties.
9. The development proposed in Appeal C is described on the application form as "rebuilding front of property with pavement boundary walls". In my opinion, this is not an accurate description of the development shown on the drawings that accompany the planning application. I have therefore adopted the description used by the Council in the formal Decision Notice, namely the erection of pavement boundary wall, new railings and sliding gate. In my view, this more accurately describes the development for which planning permission is sought.
10. At the time of my site visit, the wall and pillars of the front boundary wall had been constructed in a yellow brick but there were no railings in place between the pillars. A metal post to support sliding gates was also in situ but the sliding gates themselves were not in place. Similarly, although the pillars of the pedestrian entrances have been constructed, there were no gates in place.
11. I also noted that there are some differences between the wall and pillars that have been constructed and the pavement boundary wall shown on the drawings that accompanied the planning application. These differences include the relative heights and spacing of the pillars, the position of the pedestrian gates and the detailing of the boundary wall. The application form also states that the wall would be constructed in a red brick as opposed to the yellow brick that has been used. Furthermore, the railings on the side boundaries shown on the application drawings were not in place at the time of my site visit.
12. In my opinion, these differences represent more than minor alterations or *de minimis* changes in detail: individually and cumulatively, these differences amount to different developments. I therefore take the view that the breach of planning control alleged in the enforcement notice is not the same development as that proposed by the planning application now subject to Appeal C. I shall therefore treat the pavement boundary wall subject to Appeal C as a proposed development as opposed to an application to retain the boundary wall that has been constructed. It is the latter development to which the deemed planning application arising from the appeal on ground (a) in Appeals A & B relates. That said, because the two developments raise essentially the same planning issues, I shall consider them together.

Reasons

13. The ground of appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issue raised is the effect of the boundary wall and pillars on the character and appearance of the host property and surrounding area. Appeal C raises the same main issue. I am, however, mindful that in respect of Appeal C the proposed development includes the metal railings and sliding gate whereas the

boundary wall subject to the deemed planning application arising from the appeal on ground (a) does not. I have taken this difference into account.

14. As part of my site visit, I walked the entire length of Abercorn Road accompanied by Dr Anzelmo and a representative from the Council. I observed that the overwhelming majority of properties in Abercorn Road featured either low boundary walls of less than 1 metre in height or naturally screened front boundaries. The front gardens of the properties in this road are therefore typically visible over the front boundary treatment. This provides Abercorn Road with a cohesive and distinctive character and appearance based upon open frontages.
15. There are exceptions. The appellant drew my attention to the brick wall and railings at No 3 Abercorn Road, which in part is over 2 metres in height and is similar in appearance to the wall and railings proposed under Appeal C. Similarly, the front boundary wall of No 58 Abercorn Road exceeds one metre in height, as does the front wall to No 68 Abercorn Road. The latter wall is scalloped, and in both cases views over the front walls into the front garden behind are possible. Moreover, although exceeding one metre in height, neither of these walls approached two metres in height and neither was visually intrusive in the street scene. Consequently, the presence of the above isolated examples does not undermine the cohesive and distinctive character and appearance of Abercorn Road as a whole.
16. During the site visit, the appellant drew my attention to brick walls and railings at a number of other properties in surrounding roads, including examples in Dollis Road, Frith Lane and Holders Hill Road. The appellant also pointed out the substantial metal railings around the boundary of St Marys Church of England Primary School that front onto Dollis Road, directly opposite the junction with Abercorn Road.
17. I accept that some of these examples, particularly that in front of the block of flats in Holders Hill Road and the sliding gate at No 93 Dollis Road, are similar in appearance to the wall and railings proposed under Appeal C. However, all of these examples are set in a different context to that in Abercorn Road. In particular, unlike Abercorn Road, the character and appearance of Dollis Road, Frith Lane and Holders Hill Road is not derived from open frontages resulting from a preponderance of low boundary walls and naturally screened front boundaries. These other roads exhibit a different character and appearance and, in relation to Holders Hill Road, a different scale of development. For that reason, I consider that the examples of high walls and railings in other roads referred to by the appellant are not directly relevant to my consideration of the effect of the boundary wall at the appeal property, with or without railings, on the character and appearance of the host property and surrounding area.
18. The appellant points out that the architecture in Abercorn Road is a diverse and eclectic mix of various styles, and considers that there is no unifying factor. The appellant has submitted a series of photographs in support of that argument and, based on those and observation on my site visit, I agree with the appellant insofar as there is no consistent architectural style in the road. However, architectural style is only factor in determining the character and appearance of a road. In the case of Abercorn Road, a further key factor, and a unifying factor throughout the road, is the low boundary walls and open frontages. In relation to the developments subject to these appeals, which are

boundary treatments, I consider that the latter are the key consideration and that my focus should therefore be on the prevailing form of boundary enclosures in the road.

19. Looked at on this basis, the wall and pillars subject to the deemed planning application arising out of the appeal on ground (a), by reason of the height of the pillars, constitute a visually intrusive and incongruous form of development. The height of the brick pillars, and the extent to which they are prominent in the street scene, is entirely out of keeping with the character and appearance of Abercorn Road. For the same reasons, having regard to its relatively modest proportions, the height of the brick pillars is also out of keeping with the character and appearance of the host property.
20. This harmful impact is exacerbated by the inclusion of the railings and sliding gates proposed under the application now subject to Appeal C. Although the railings would allow some view of the frontage of the appeal property, the presence of these railings and the sliding gate would appreciably increase the sense of enclosure to the front of this property and severance from the street scene. Indeed, in my view, the development proposed in that application is the very antithesis of the distinctive character and appearance of Abercorn Road, as defined by the open frontages of the majority of properties in this road.
21. I conclude that the wall and pillars subject to the enforcement notice, and the erection of pavement boundary wall, new railings and sliding gate proposed in Appeal C, do and would unacceptably harm the character and appearance of the host property and surrounding area. I therefore conclude that the developments both as constructed and as proposed are contrary to Policy CS5 of the London Borough of Barnet Local Plan (Core Strategy) Development Plan Document and Policy DM01 of the London Borough of Barnet Local Plan (Development Management Policies) Development Plan Document. These policies require, amongst other things, that development should be based on an understanding of local characteristics and should preserve or enhance local character by respecting the appearance of surrounding buildings and streets.
22. The boundary wall and pillars, with or without the railings and sliding gate, also fail to accord with the Council's Local Plan Supplementary Planning Document: Residential Design Guidance (SPD). This SPD indicates that, in most cases, walls defining the front of properties should be kept low and that boundary treatments such as high railings and gates can be obtrusive and have a negative impact on the street scene by conveying a sense of severance and overbearing.

Other matters

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the boundary wall and pillars, with or without the railings and sliding gate, fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

24. The appellants explain that they suffered two burglaries during the period when his property was being refurbished, and that on one day alone builders undertaking work at the property had items stolen from their vehicles. I also understand that the appellants' car has been vandalised, as have others parked in the road. The appellant therefore considers that the crime rate in the area is on the increase, and that the wall and railings are necessary to provide security for himself and Dr Anzelmo's elderly mother, who occupies one of the two properties.
25. Whilst I do not dismiss these concerns lightly, I have been provided with no evidence in support of them in terms of crime numbers or police reports. Moreover, on the information provided, it appears to me that the burglaries referred to took place whilst the property was being refurbished. This suggests that the target for the burglars may have been the builder's equipment rather than the appellants' personal property. Indeed, the appellant specifically refers to the theft of building equipment on these occasions and I have been provided with no evidence of burglaries being carried out at other times. Consequently, on the evidence before me, I am not persuaded that crime is a persistent problem in the area, such that improving the security of the appeal premises is sufficient to outweigh the harm that I have identified above.
26. Having regard to the above, I conclude that there are no material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. I therefore conclude that planning permission ought not to be granted for the boundary wall and pillars, with or without the railings and sliding gate.

Conclusion

27. For the reasons given above, I conclude that the appeals should not succeed. I shall dismiss the section 78 appeal against the refusal of planning permission (Appeal C). I shall uphold the enforcement notice as corrected and refuse the grant planning permission on the deemed applications (Appeals A and B).

Formal Decisions

28. It is directed that the enforcement notice be corrected by
- deleting entirely paragraph (3) of the notice as currently worded and replacing this with the words "without planning permission, the erection of a boundary wall with pillars fronting the highway that in part exceeds 1 metre in height."
29. Subject to those corrections, Appeals A and B are dismissed and the enforcement notice is upheld. Planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.
30. Appeal C is dismissed.

Paul Freer

INSPECTOR