
Appeal Decision

Site visit made on 25 April 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 25 May 2017

Appeal Ref: APP/G5750/C/17/3166728

Land at 1 Tunmarsh Lane, Plaistow, London E13 9ND

- 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 Zulfiqar Ahmed against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 9 December 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a rotating anti-climb system.
 - The requirements of the notice are to:
 1. Demolish the rotating anti-climb system including all metal supports.
 2. On completion of step 1 above, remove all materials and debris from the site.
 - The period for compliance with the requirements is ten months.
 - The appeal is 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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Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Reasons

1. The appeal in 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 rotating anti-climb system on the character of the host property and the surrounding area, including the pedestrian environment.
 2. The appeal property is a two-storey terraced house located on the east side of Tunmarsh Lane, at the junction with Jedburgh Road. The side boundary of the property comprises a brick wall, some 2.0 metres in height, which runs along the back edge of the pavement in Jedburgh Road. There is a window in the first floor rear elevation of the house that overlooks the entire length of the boundary wall, as does a window in the rear elevation of the two-storey outrigger to the house.
 3. The character of the surrounding area is mixed. To the south and east of the appeal site, the character is predominantly residential. To the north, there are a variety of commercial and retail uses, whereas to the south-west is the Tunmarsh Centre and further residential development.
 4. Nevertheless, and notwithstanding the mixed character of the surrounding area, the character of the host property itself is wholly residential. Moreover, the house dates to the Victorian period and in terms of character and
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appearance is typical of houses from that period. The rotating anti-climb system installed atop the boundary wall is overtly modern in appearance, and is of a design and appearance that is more usually associated with commercial properties. In that respect, the rotating anti-climb system is an incongruous and unsympathetic addition that fails to reflect the period residential character of the host property.

5. I concur with the appellant that the relevant test is not that the rotating anti-climb system should enhance the character of the host property. Nevertheless, far from enhancing or even preserving the character of the property, the rotating anti-climb system actively detracts from it.
6. I observed during my site visit that a number of properties in the surrounding area feature some form of security fencing, including but not limited to the example at the junction of Tunmarsh Lane and Augurs Lane referred to by the appellant. The latter is a retail property and in that respect the presence of security measures on a retail premises can be distinguished from the installation of a rotating anti-climb system on the appeal property, a residential dwelling
7. Furthermore, even though a number of properties in the surrounding area do feature some form of security fencing, they were not so prevalent as to be a characteristic of the surrounding area. Moreover, whilst not widely visible from beyond the immediate vicinity of the appeal site, by reason of its design and appearance, the rotating anti-climb system on the appeal property is nonetheless a particularly intrusive feature in the street scene in those limited views and therefore not justified by the presence of other less intrusive examples in the surrounding area.
8. In addition, the rotating anti-climb system is installed on top of a boundary wall that runs along the back edge of a pavement used by members of the public. By reason of its design and appearance, the rotating anti-climb system has an intimidating and hostile presence that detracts from the pedestrian environment.
9. I conclude that the rotating anti-climb system unacceptably harms the character of the host property and the surrounding area, as well as the pedestrian environment. The development is therefore contrary to Policies 7.1, 7.4 and 7.6 of The London Plan, as well as Policies SP1 and SP3 of the London Borough of Newham Core Strategy (Core Strategy). These policies require, amongst other things, that buildings should be of high quality design and that streets meet the needs of the community.
10. In relation to this main issue, the Council also cites Policies S6 and H1 of the Core Strategy in the reasons for issuing the notice. However, on my reading, both of these policies relate primarily to the provision of new housing and for that reason are only of limited relevance to this main issue. Similarly, on my reading, Policy SP5 of the Core Strategy relates primarily to the protection of Heritage assets, whereas SP8 of the DSPDPD relates primarily to neighbourliness. Policy SP7 relates only to a number of specifically named Linear Gateways, of which Tunmarsh Lane is not one. None of these policies are, therefore, directly relevant to the stated reasons for issuing the enforcement notice and consequently I afford them only limited weight in the particular circumstances of this case.

Other matters

11. 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 rotating anti-climb system 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.
12. The essence of the appellant's case is that the Council has not applied the correct balance in terms of the effect of the rotating anti-climb system on the character of the area when assessed against the three dimensions to sustainable development set out in the National Planning Policy Framework (Framework), namely: an economic role, a social role and an environmental role. It is convenient in this case to assess the breach of planning control against these three dimensions of sustainable development in the reverse order to that listed in the Framework.
13. In terms of the environmental role, the appellant concedes that the rotating anti-climb system causes visual harm, assessed by the appellant as being 'very minor'. However, for the reasons set out above, I put this harm higher. In my view, the harm caused by the rotating anti-climb system to the character of the host property and the surrounding area is significant.
14. In terms of a social role, the appellant explains that his family has suffered two attempted burglaries at the property and that as a result his daughter, who occupies the house with her two young children, feels unsafe in the property. The appellant goes on to explain that the rotating anti-climb system was installed in response to those attempted burglaries.
15. In this context, the appellant contends that the area suffers from a higher than average crime rate. In support of that, the appellant has produced comparative data for crime rates in Plaistow and Wanstead. On the basis of that data, it is apparent that Plaistow does suffer higher crime rates on average than does Wanstead, albeit that in relation to burglaries the difference is not so pronounced as with other types of crime.
16. However, the data provided is for comparative crime rates in Plaistow and Wanstead only. No data has been produced for other areas, including other parts of the London Borough of Newham. No explanation has been given as to why Wanstead has been selected to provide the comparative data, as opposed to other parts of the Borough or other parts of London, or why a larger data sample was not provided. Moreover, I have been provided with no information to demonstrate that Wanstead is directly comparable to Plaistow in terms of factors such as property type, population density and economic profile. In the absence of this information, I have no basis on which to determine whether crime rates in the vicinity of the appeal site are significantly higher than in other parts of the Borough or other parts of London.
17. The appellant also points out that the appeal property has a long, rectangular shape and that the adjoining property, No 2a Jedburgh Road, has no windows in the flank elevation. As a consequence, the appellant contends that the

property does not benefit from good natural or passive surveillance, such that the property is vulnerable to intruders. However, it appears to me that the windows at first floor level in the rear elevations and outrigger of the appeal property both overlook the boundary wall and offer natural surveillance from within the appeal property itself. I am therefore not persuaded that the appeal property is particularly vulnerable to intruders by reason of poor natural or passive surveillance.

18. In assessing the weight to be afforded to the social role of the rotating anti-climb system, I am mindful that the right for private and family life, home, property and correspondence are qualified rights incorporated in Article 8 and Article 1 of the First Protocol to the Human Rights Act 1998. Nevertheless, having regard to the limited evidence on comparative crime rates and the potential for surveillance from the appeal property itself, I am not persuaded that the protection of the family home is an overriding consideration in this case. Accordingly, I afford the matter limited weight.
19. In terms of an economic role, the appellant has provided no evidence that the installation of the rotating anti-climb system has generated any significant benefit to the local economy. This is therefore a matter to which I attach very limited weight.
20. In weighing the overall balance, I consider that the limited weight to be afforded to the social role of the rotating anti-climb system, combined with very limited weight to be afforded to the economic role, does not outweigh the significant harm in relation to the environmental role.

Conclusion on the ground (a) appeal

21. I have found that the rotating anti-climb system fails to accord with the development plan. The considerations advanced by the appellant are not of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. Consequently, I conclude that planning permission ought not to be granted for this breach of planning control.
22. Accordingly, the appeal on ground (a) fails.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission.

Formal Decision

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

Paul Freer

INSPECTOR