



Appeal Decisions

Site visit made on 19 August 2019

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2019

Appeal A: APP/N5090/C/18/3216454

Appeal B: APP/N5090/C/18/3216455

Land at 49 Broughton Avenue, London N3 3EN

- The appeals are 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 Mr P Atwal (Appeal A) and Mrs Malini Atwal (Appeal B) against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 12 October 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of 4-metre-high willow fence to rear of garden.
 - The requirements of the notice are: 1 Dismantle and remove the 4-metre-high willow fence which runs along the rear of the property adjacent to the Windsor Open Space. 2 Permanently remove all of the constituent materials resulting from the works in 1. above from the property.
 - The period for compliance with the requirements is: 2 Months.
 - Appeals A and B are proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. Since the appeals have been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of Decision

1. The appeals are allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Procedural Matter

2. The parties were notified in advance of my intended site visit however the Council were not in attendance. I consequently proceeded to inspect the site unaccompanied and do not consider that injustice arises from determining the appeal on this basis.

Main Issue

3. The main issue is the effect of the willow fence on the character and appearance of the area, and on the amenity value of an oak tree the subject of a tree preservation order.

Reasons

4. The appeal site accommodates a large semi-detached property. The immediate area is characterised by trees and shrubs, particularly at the rear where there is a footpath which provides access along the Windsor Open Space, which forms part of the Metropolitan Open Land. A variety of fences denote the

boundaries between the properties on Broughton Avenue and the open space to the rear. This area therefore has a verdant but varied character and appearance.

5. Planning permission was refused and an appeal subsequently dismissed¹ in January 2019 for the retention of the fencing. However, that Inspector did not find harm to the character and appearance of the area and concluded that the fencing was '*not overly prominent or obtrusive and instead blends into the varied and verdant setting.*' I have little in the way of substantive evidence to differ from this conclusion given the location of the fencing and that it is constructed from willow which gives it a soft and natural appearance.
6. Instead, there were concerns that the health of an oak tree, the subject of a tree preservation order, could be compromised as there was an '*absence of any substantive evidence to the contrary*' and accordingly a precautionary approach was therefore adopted.
7. In response, the appellants have provided substantive evidence for this appeal concerning the construction of the fencing. There is also a recent Arboricultural Condition Report from a qualified and competent person². Taking the balance of the evidence now before me, I am persuaded that the methods and materials that were employed in the construction of the fencing, including underground works, would have minimised impact to this tree given neither mechanical machinery was used nor concrete to backfill the post holes. The oak tree was therefore adequately protected in these regards. There was also no objection raised by the Council's Tree Officer and the condition of the tree has since been monitored, as had been recommended.
8. The fencing, and with it the associated posts, have been in-situ since April 2017. I have little in the way of substantive contrary evidence, including observations during my site visit, to indicate that the health of the tree has deteriorated over this time and with it the public amenity value it exhibits has been reduced.
9. In its appeal statement the Council has listed policies and documents in addition to those cited in the enforcement notice. However, copies of these have not been provided and their specific relevance to the development enforced against has not been evidenced or explained in that statement. Consequently, I have no evidence before me to suggest any conflict arises with these policies.
10. I therefore conclude that the willow fence is not harmful to the character and appearance of the area, or on the amenity value of an oak tree the subject of a tree preservation order. It therefore accords with Policies DM01 and DM15 of Barnet's Local Plan Development Management Policies Development Plan Document, 2012. These policies, amongst other things, require development to preserve the character of an area and open spaces. For the same reasons it accords with the good design and conserving and enhancing the natural environment aims of the National Planning Policy Framework.

¹ APP/N5090/D/18/3205795

² Clear Cut Trees, Ben Robinson, 26 June 2019

Other Matters

11. Representations have been received which concern other matters, including what appears to be a mobile home in the rear garden and the raising of land levels. However, only those matters specified in the allegation, which solely concerns the fencing, are before me. The implications of future works to the tree, such as pruning, have also been raised, but again this matter is not before me.

Conclusion

12. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. Given the development has been completed and raises no other planning issues that need to be ameliorated, planning conditions are not necessary.

Formal Decision

13. The appeals are 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 4-metre-high willow fence to rear of garden on land at 49 Broughton Avenue, London N3 3EN referred to in the notice.

Paul T Hocking

INSPECTOR