
Appeal Decision

Site visit made on 8 October 2019

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2019

Appeal Ref: APP/G5180/C/18/3218808

16 Romney Drive, Bromley BR1 2TE

- 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 Ms Renfei Li against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 30 November 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a fence and associated concrete gravel boards extending to a maximum height of 1.9m, together with the installation of a double wooden gate (following the green line on the plan attached to the notice).
 - The requirements of the notice are to remove from the Land the unauthorised fence, including the gate and posts and leave the Land in a neat and tidy condition.
 - The period for compliance with the requirements is one month.
 - 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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Decision

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 fence and associated concrete gravel boards, together with the installation of a double wooden gate on land at 16 Romney Drive, Bromley BR1 2TE, referred to in the notice.

Procedural Matter

2. The notice was issued in November 2018 and the reasons referred to Policies BE1 and BE7 of the Council's Unitary Development Plan (UDP). Since then, the Council have adopted the Bromley Local Plan (LP) on 16 January 2019 and Policy 37 replaces the previous policy requirements. As the UDP has now been superseded I shall therefore have regard to the new policy in the determination of this appeal.

The ground (a) appeal and the deemed planning application

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area.

Reasons

4. The appeal concerns a detached house situated on the corner of Romney Drive and Newing Green. The entrance to the property is five steps down from Romney Drive. Habitable room windows overlook both Newing Green and the rear garden, which is sited parallel to Romney Drive. A detached garage building is also situated in the rear garden with vehicular access from Romney Drive. The garage door has been removed by the appellant and replaced with a glazed door.
5. The surrounding area comprises a modern residential estate situated on rising ground with a variety of house types. A key feature of the appearance of the estate is the combination of open plan front gardens and extensive landscaping, which has now matured. This has produced a very attractive street scene, which the Council have sought to protect by the removal of permitted development rights for the erection of fences and other means of enclosure.
6. The appellant has removed the fence that formerly enclosed her rear garden, which comprised fence panels supported by concrete posts, and erected a new fence of a similar appearance. This now encloses the adjacent grass verge and the forecourt to the garage, which has the effect of enlarging the rear garden. The new fence is situated next to and level with the back edge of the pavement and returns to meet the outside wall of the garage whereas previously it was sited below the level of the pavement as the grass verge slopes down to the rear garden.
7. The Council are concerned that the new position of the fence results in a loss of openness and harms what is a principal feature of the area. In addition, the grass verge with its three trees contributed to the pleasant appearance of the area.
8. The enclosure of the grass verge and the garage forecourt has resulted in a loss of openness. Policy 37 of the LP requires all development proposals to positively contribute to the existing street scene and respect important views or landscape features. In this case it is the grass verge with the three trees that contribute to the verdant setting of the estate. Whilst the forecourt was open, it was not planted and clearly was used for off street parking. It is my view that cars parked in front of dwellings on the estate interrupt the flow and views of the landscaping, which has been carefully laid out, having regard to the sweeping curve of the principal road, the layout of the houses and changes in levels.
9. The grass verge was narrow in width and short in length. Its contribution to the pleasant appearance of the area was therefore small. Furthermore, the trees planted in the verge have been retained by the appellant, notwithstanding the fact that they are protected by a Tree Preservation Order, and their canopies are clearly visible above the fence. As such, they continue to add to the verdant setting of the estate.
10. Having regard to important views, on entering Romney Drive it is the dwellings set back from the road at Nos 8-14 that form a prominent vista which is probably why there are groups of trees planted in front of Nos 12-14. These immediately soften the appearance of these dwellings and maintain the original woodland setting of the estate described by a third party. On turning the

corner, it is the group of trees planted in front of Nos 9-17 that take the eye forward. The harm caused by the enclosure of the grass verge is therefore modest and I find that the new fence line is not particularly prominent in the street scene. Although the new position of the fence results in a slightly longer run of fence panels, overall the fence has been well designed and is of a sturdy construction. It is also of a similar appearance to the previous fence.

11. The appellant submits that the level of the back garden is about one metre below the level of the road and the new position of the fence improves her privacy and security. Although her submissions on this matter are not elaborated any further, having viewed corner properties elsewhere on the estate, it would appear No 16 is the only one with a back garden that is below the level of the road. Where other houses have a rear garden parallel to the road, the side boundary has been planted with shrubs and residents have allowed them to grow into thick high hedges, thus preserving their privacy and aiding security without repositioning their fencing. At another property, where the same house type as the appeal property has been built, the rear garden is actually higher than the road. Levels of privacy are therefore well preserved even though the fence does not include the grass verge.
12. The Council have submitted before and after photographs of the works and it appears that previously it was possible to see over the top of the fence into the lounge windows of the appeal property when walking along the road. The new fence, although it is of a similar height to that which existed previously, due to its new position, prevents this.
13. The Council and some third parties have expressed concern that the enclosure of the former garage forecourt has resulted in a loss of two off street parking spaces. Other third parties also raise concerns about a new hardstanding, loss of light to No 14, that the fence line includes double gates, precedent and estate covenants.
14. The appellant maintains that the garage could still be used and this is why she has included double gates in the fence line, although I note the previous hard standing has now been turfed. However, I am not aware that the Highway Authority has raised any objection to this arrangement. The new hard standing area that has been created on the corner of the plot is not attacked by the notice and is therefore not before me. Any loss of light to the ground floor habitable rooms at No 14 is considered to be negligible given the front of No 14 generally faces south and given the position of the garage at No 16.
15. I have considered the arguments that the enclosure of the grass verge would set a precedent for similar developments on the rest of the estate. However, no directly similar or compatible sites to which this might apply have been put forward. Each application and appeal must be determined on their individual merits and a generalised concern of this nature does not justify withholding planning permission in this case.
16. Furthermore, I can see no reason why a grant of planning permission would negate or supersede any covenants on the land. Accordingly, issues relating to title and covenants have not had any material bearing on my assessment of the planning issues in this appeal.
17. I have found that the development is contrary to the development plan. However, in terms of the effect of the development on the character and

appearance of the area, the loss of openness is modest, the trees are retained and the design of the fence is acceptable. In addition, the development improves the privacy enjoyed by the occupiers of the property. These are material considerations which, on balance, outweigh my findings in respect of the development plan. For these reasons and in these particular circumstances, I conclude that the development does not harm the objectives of Policy 37. As such, the appeal succeeds on ground (a) and planning permission will be granted. No conditions are necessary as the development was substantially complete when the notice was issued.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

D Fleming

INSPECTOR