



Appeal Decision

Hearing Held on 21 January 2020

Site visit made on 21 January 2020

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 03 February 2020

Appeal Ref: APP/N5090/C/18/3216722

31 Ingram Avenue, London NW11 6TG

- 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 Alon Zakaim against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 24 October 2018.
 - The breach of planning control as alleged in the notice is without planning permission the erection of two pairs of low driveway gates and associated stone piers at the front of the property.
 - The requirements of the notice are:
 - i) Demolish the unauthorised two pairs of low driveway gates and associated stone piers and reinstate the property boundary of previous design, size and specifications shown in existing plan 1113-EX2-200 of planning permission 18/5011/HSE dated 08.10.2018.
 - ii) Permanently remove from the property all constituent materials resulting from the works in (i) above.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
-

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 two pairs of low driveway gates and associated stone piers at the front of the property on land at 31 Ingram Avenue, London NW11 6TG referred to in the notice.

Procedural matters

2. Section 1.7 of the Hampstead Garden Suburb Conservation Area Character Appraisal Statement Introduction (CA Appraisal) sets out the specific powers and responsibilities of the Hampstead Garden Suburb (HGS) Trust (the Trust). Dr David Hickie has been instructed to act as an expert witness for the appellant in respect of heritage matters in a case between the Trust and Mrs Zakaim regarding the works that are the subject of this notice. As the heritage issues in that case are the same as those before me, Dr Hickie produced 'Works at 31 Ingram Avenue, London: Heritage Summary Statement' (Document 4) to assist the Hearing.

3. It was not available to the appellant until the weekend before the Hearing opened. In those circumstances and given that the substance of it was covered in 2 pages, I accepted the Document and adjourned for 30 minutes to allow the Council the chance to consider it.
4. The Council also sought to introduce what appeared to be a detailed analysis of crime data for other areas in London to give context to those produced by the appellant for the HGS area. The appellant's evidence had been available to the Council since November 2018. The Council did not explain why the rebuttal evidence was only made available at the Hearing. Furthermore, for the appellant to give it proper consideration would, in my judgement, have required the Hearing to be adjourned to another date. In those circumstances, I was not minded to accept this very late evidence and the Council did not press me to do so.

The Notice

5. The very well-known *Miller-Mead* Court of Appeal judgement established the principle that a notice must tell the recipient fairly from within its four corners what s/he has done wrong (the breach of planning control alleged) and what must be done to put it right to avoid the possibility of prosecution (the requirements). In this case these are, respectively and in summary, the installation of two pairs of driveway gates and associated stone piers and the removal of same and reinstatement of the boundary to the previous design, size and specifications shown on Plan A (emphasis added).
6. There are six stone piers on the front property boundary. Looking at the property from the road, what I shall call piers 1 and 6 are at the far left- and right-hand ends respectively of the boundary treatment. Piers 2 and 3 support the pair of gates across the entrance at the left-hand side of the property while piers 4 and 5 perform the same function for the pair of gates across the right-hand entrance. There is a low stone wall between piers 1 and 2, piers 3 and 4 and piers 5 and 6.
7. Neither party provided with their evidence Plan A. I do not know if it was attached to the notice but, as it was a plan provided by the appellant in the first instance, he would not have been disadvantaged had it not been.
8. My initial reading of the notice was therefore in the context only of the images supplied in evidence. My clear understanding of the breach alleged was that it related to the two pairs of gates and to piers 2, 3, 4 and 5 being the ones 'associated' with the gates. I did not understand it to be attacking piers 1 and 6 or any of the low walls. Before the Hearing moved to the discussion of the main issue, I asked the Council if this understanding was correct and I was told that it was. It emerged later that this was also the appellant's understanding.
9. Later, the Council stepped back from this confirmation. It argued with reference to Plan A that, in fact, all six piers were required to be removed in order to fully return the frontage of the property to that shown which was its condition before the breach took place. While I can see that might be an equally plausible interpretation, it inevitably means that there is ambiguity in the notice.
10. This is not however a case where the *Miller-Mead* principle necessarily requires the Notice to be declared a nullity. The appellant is, in fact, clear from the

notice what he has done wrong and what needs to be done to put it right. However, his understanding differs from that which the Council now says was the intention when issuing the notice. I made it clear to the Council that I would consider the appeal on ground (a) in the context of the notice leaving piers 1 and 6 in place. I invited the Council to consider the potential consequences of that and withdraw the notice if that was deemed appropriate.

11. After a short adjournment, the Council confirmed that it did not wish to withdraw the notice.
12. There is a further factual error in requirement (i) in that the Council refused planning application 18/5011/HSE. Both parties agreed that I could correct this error without injustice if appropriate to do so.

The appeal on ground (a) and the deemed planning application.

13. The terms of the deemed planning application are defined by the breach of planning control alleged. In view of my comments about the notice, the deemed planning application is for the two pairs of gates and the stone piers that support them. It does not relate to the other two stone piers or to the low stone walls.
14. The main issue for my consideration of the appeal on this ground is whether the development carried out preserves or enhances the character or appearance of the HGS Conservation Area (HGSCA).

Reasons

15. I am required by s72(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 as amended to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. The court has held that a development that leaves the character or appearance unharmed would achieve the statutory objective of preserving a conservation area.
16. The court has also held that it is the effect of the development on the conservation area as a whole that should be considered. It was common ground between all parties that this is a very challenging requirement to meet when considering development within HGSCA.
17. HGS was developed according to the innovative concept of Henrietta Barnett of a garden suburb for all classes. Following land acquisition, building began in 1908 and continued to the 1930s with the development of the Finchley leasehold which added Ingram Avenue and Winnington Road to the Suburb. Development of Winnington Road continued through to the 1970s. Under its own powers, the Trust is able to exercise considerable control over development within HGS to ensure that the original concept and the designs of what has been described as a 'who's who' of eminent architects is maintained.
18. HGS covers about 400ha; an enormous area. The 2001 Census (the latest date for which information is given in the appeal documents) recorded a population of some 12,500 in a little over 5,000 households. Moreover, the development was deliberately designed to provide a range of housing from low to modest cost rented accommodation to large houses in extensive plots for the rich. Despite its extent and variety, it has been designated as a single

conservation area. Capturing and describing the character and appearance of the area as a whole is therefore difficult.

19. There are two documents applicable to HGSCA as a whole. The first, the CA appraisal, is supported by 17 character area appraisals, often based on a single road. The Trust explained that these were prepared by local volunteers rather than heritage professionals although drafts were subject to supervision and editing. They do however contain errors. The appraisal for Ingram Avenue says about the appeal property that 'Nos. 31 and 33 are a handsome pair in grey brick with red corner pilasters by William Willets. Both have been marred by ostentatious front doors and porches.' In fact, the Trust confirmed that both criticised features were part of the original design. It would therefore be wrong, in my judgement, to place too much emphasis on the effect of the development on the character and appearance of the particular character area as described in the character area appraisal. I do not believe that would satisfy the test set down by the court.
20. The second, the Hampstead Garden Suburb Character Appraisal Design Guidance (DG) gives detailed guidance about what is and is not acceptable when carrying out any of the developments for which consent is required from the Council and/or the Trust.
21. The Trust argued at the Hearing that the DG had to be interpreted in the context of the area of HGS where development was contemplated. I agree but I cannot accept the contention that it is not meant to apply to all streets in the HGSCA; it simply does not say that. In fact, the opposite interpretation seems more likely and the guidance given within Section 6 about, among other things, gates and walls tends to support that view. While it says that driveway gates '...were not common and in most cases will not normally be acceptable...' the very phrasing indicates, in my view, that each case will be judged on its merits wherever the development is proposed.
22. By phrasing the reasons for issuing the notice as it has, that would also seem to be the view of the Council. It acknowledged that in identifying the height and design of the gates and piers as the problem rather than their simple presence at all, the implication that some combination of height and design must be acceptable was inescapable as a matter of logic.
23. In describing the character and appearance of HGSCA, trees (either pre-existing or planted) and landscape are noted in the CA appraisal as being of particular importance to the design and philosophy of HGS. The natural topography and pre-existing tracks and woodland informed the designed layout of the Suburb and influenced the position and alignment of the highways provided.
24. Trees and hedges are noted as the defining elements of HGS, providing a complimentary setting to the built form. The use of hedges to mark plot boundaries was one of the basic tenets of the master plan and remains an essential feature of the character and appearance of HGS today. Yew and holly are the more common species in the hedges around the Heath Extension which is the part of HGS within which Ingram Avenue lies. When walking or driving along any road within the Suburb, the trees and plot boundary hedges are the most prominent elements.

25. In contrast, there is simply no mention at all of the contribution that gates, or lack of them, or open frontages make to the significance of the heritage asset. Indeed, having open frontages to properties would amount to a contradiction of the continuing requirement to mark property boundaries with hedges.
26. I have already referred to the advice given in the DG about driveway gates. It also notes that brick piers and low walls are '...uncharacteristic of much of the Suburb and will not normally be approved. Even low brick walls can visually disrupt a run of hedged boundaries.'
27. The appeal property lies at the southern end of HGS to the east of the Heath Extension and to the south of the golf course. Ingram Avenue links Wildwood Road and Winnington Road. Although developed over a long period, properties on each have many features in common. All have been built for the rich and, especially towards the southern end of both Wildwood Road and Winnington Road, feature substantial dwellings in equally substantial plots. Although the subject of three separate character area appraisals, to my mind, the character of Ingram Avenue and, at least, the southern sections of the other two roads is essentially the same. While exhibiting the same tree-lined roads and hedges to property boundaries representative of the character and appearance of HGSCA as a whole, the design and size of the dwellings lend this area the character and appearance of the wealthiest part of the Suburb where the richest would live as, indeed, was the intention of the HGS architects.
28. While few properties along Ingram Avenue have gates across the entrances to their forecourts, that is not the case on either Wildwood Road between its junctions with Wildwood Rise and Ingram Avenue or Winnington Road around and immediately north of its junction with Ingram Avenue. There are many examples of high hedges and of both piers and gates on both roads. Indeed, along Wildwood Road I observed one property with a very tall and thick hedge with a high close-boarded fence embedded within it while another property had small signs on the boundary wall warning of an electric fence behind its substantial hedge. On yet others, even pedestrian gates were solid and secured by entry code systems.
29. Despite these particular features which are not typical of the character and appearance of HGSCA as a whole, when looking and walking along both roads, the essential character of a tree and hedge lined rural thoroughfare (which is typical) is to my mind maintained although views to some dwellings are somewhat obscured which is not usual within the HGSCA.
30. Turning to Ingram Avenue, boundary hedges are generally much lower and more in keeping with the character and appearance of the HGSCA as a whole. They allow clear views of the front elevations of the impressive dwellings. Again, the feel of the Avenue is that of a characteristic tree and hedge lined street, linking to the wooded open space of the Heath Extension broadly to the west from which it rises.
31. As already noted, driveway gates are not common. The Council confirmed that those at numbers 30, 37 and 41 had not been approved but neither had they been subject of enforcement action. The Trust confirmed that those at number 38 would not be reinstated by negotiation. During my inspection of the area I noted that two further properties had chains across the driveway entrances.

32. Brick piers and low walls are however much more prevalent. Indeed, the notice requires brick piers of two different heights and low walls to be installed by way of reinstatement.
33. To summarise, while driveway gates may not be common across the HGSCA as a whole, they are not uncommon in this part of HGS. The appellant's evidence is that 25% of properties in these three roads have gates. Other than those on Ingram Avenue, I have no evidence about their planning status from the Council. Brick piers and low walls are even more prevalent. Both driveway gates and brick piers therefore have become part of and contribute to the character and appearance of the Ingram Avenue/Wildwood Road/Winnington Road area of the HGSCA in my view even though they may not be characteristic of the HGSCA as a whole. It is in that context that the main issue must be assessed.
34. The appeal property is situated on the long, straight part of the Avenue. It has the low hedges typical of the area although the growing belt of the trees just to the rear of the hedge is perhaps less so and will, over time, partially obscure views of the dwelling behind. In my opinion, the modest gates that have been installed are imperceptible until passing the property. They therefore have no effect on views along the Avenue and thus do not alter the perception of the character of the area or its contribution to the character and appearance of HGSCA as a whole.
35. The installed gates are metal rather than timber as advised in the DG. They do however have an open design as do all those in the DG illustrations and they are not dissimilar in either height or style from a pair of gates stated to be 'of good design'. While they have been designed to replicate the appearance of installed side gates approved by the Trust, I agree with the Trust that the context for side gates is wholly different. In my view, the fact that the 'wrong' material has been used does not justify a finding that the installed gates harm the appearance of the HGSCA. In fact, I consider them to be closer to the example given of good design than many others in this part of the HGSCA.
36. Turning to the brick piers, while a little taller than some others in the area (but lower than many more), the four piers attacked by the notice are little different to the many that have become part of the character of this relatively small part of the HGSCA.
37. In appearance they are topped by architectural lanterns as are many others. I have taken into account that even if the requirements of the notice were complied with, two taller piers would remain. Whilst the symmetry achieved now would remain, the distinction between the retained piers and the considerably lower piers shown on Plan A would disturb the rhythm of the street scene to its detriment. That is therefore a factor that weighs in favour of retention of the installed piers which I do not consider harm the appearance of the area in any event.
38. At the Hearing the Trust confirmed that it was simply opposed to the installation of driveway gates as a matter of principle. While I understand that position, it is not one that is consistent with the policies of the development plan or the DG or the Council's position as set out in the reasons for issuing the notice. I was no clearer at the end of the Hearing than I was at the start what the Council objected to with respect to the height and design of the gates and piers; the stated reason for issuing the notice. It is clear from Plan A that the

installed gates and piers are different from the boundary treatment previously in place, but difference does not equate to harm as a matter of principle.

39. In conclusion, I consider that the installed gates and piers are in keeping with the character and appearance of this relatively small part of the HGSCA as it has been allowed to evolve. The development does not therefore harm the character and appearance of the Ingram Avenue/Wildwood Road/Winnington Road area. I acknowledge that elsewhere in the HGSCA, such gates and piers may not be so common. However, as noted above, they are not mentioned as being key components of either the character or appearance of the HGSCA as a whole. As the Ingram Avenue/Wildwood Road/Winnington Road area represents but a small part of the HGSCA, the effect of the development carried out on the character and appearance of the HGSCA as a whole is, at worst, neutral. The character and appearance of the HSGCA as a whole is therefore preserved. I note that this is the conclusion too of Dr Hickie, the heritage expert instructed by the appellant. There is therefore no conflict with policies DM01 and DM06 of Barnet's Local Plan: Development Management Policies, adopted in September 2012.

Other matters

40. The appellant has submitted a large body of evidence on the nature and amount of crime that takes place in the Ingram Avenue/Wildwood Road/Winnington Road area and the effect that this has had on the well-being of family members. This is the justification for requiring a barrier across the driveway entrances to supplement the already extensive security measures installed at the property. Expert evidence has been given about the deterrent effect of a physical barrier. Further evidence is given about incidents that have befallen family members. One who suffered an attack after the appellant purchased the appeal property also lives in the Ingram Avenue/Wildwood Road/Winnington Road area.
41. I saw during my tour of the surrounding area that most, if not all, of the properties have security measures in place, some of which I have already referred to above. The appellant refers to the role of LCS Security Services, employed to provide reassurance for homeowners. I noted several properties with signs saying that LCS was protecting the premises and also observed at least two LCS liveried vans circulating in the area. It is clear from the representations received by the Planning Inspectorate that this is a live issue of concern, especially as criminals have in recent years taken to operating in gangs using mopeds, to tail gating residents as they return home and to taking vans on to forecourts to remove the property being stolen.
42. I give considerable weight to this evidence and note that the detail provided to me contrasts markedly with the limited amount provided to my colleagues when considering the appeals referred to by the Council. This is a distinguishing factor between this appeal and those.
43. I do however recognise that on the main issue my conclusion is different to that of my colleagues.
44. The dismissed appeal at 15 Winnington Road was, in effect, overturned by a later approval by the Council following precisely the type of attack that the then appellant had hoped to prevent through the installation of gates that were the subject of the dismissed appeal.

45. There are two appeal decisions for 21 Winnington Road. Circumstances will clearly have changed from those in 2001 when the first was determined. It is clear from the appeal decision dated October 2018 that the appeal site is at northern end of the road. The Inspector specifically notes the distinction between that part and the southern part where he records that there are numerous gates. It is the southern part that provides context for this appeal.
46. Finally, there is the appeal at 11 Winnington Road determined in April 2016. In that case, the development proposed included a pedestrian gate as well as driveway gates and piers. Both the piers and the gates would have been somewhat higher than those that have been installed at the appeal property.
47. Each of these appeal decisions is therefore distinguishable on its facts from that which I have made.
48. The Council is concerned that allowing the appeal would set a precedent and make it more difficult to refuse planning applications for similar developments in the area. I acknowledge that concern, especially in what local people clearly feel is the current personal and property security environment. However, as I have already found, driveway gates and piers are now a feature of the character and appearance of the Ingram Avenue/Wildwood Road/Winnington Road area. From the Council's evidence it would appear that some of these have not been expressly approved although they may now be immune from enforcement action. The Council and the Trust have the powers to ensure that any application coming forward is considered against the very detailed advice in the DG and determined accordingly.
49. None of these other matters alter the conclusion that I have drawn that there would be no conflict with the cited development plan policies.

Conditions

50. As I am allowing the appeal the mitigation measure that could have been secured through the appellant's suggested condition does not need to be considered further.
51. There was discussion about a personal or time limited condition. On reflection, I agree with the appellant that the latter would not meet the tests for such a condition set out in the Planning Practice Guidance. As I have found that the development preserves the character and appearance of the HGSCA as a whole, it is not necessary to restrict the development for the benefit of the appellant alone.

Conclusion

52. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

Brian Cook

Inspector

APPEARANCES

FOR THE APPELLANT:

Tim Taylor	Partner, Foot Anstey LLP
Alon Zakaim	Appellant
Karen Zakaim	Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Brett Sinclair MA	Enforcement Officer with the Council
-------------------	--------------------------------------

INTERESTED PERSONS:

David Davidson	Hampstead Garden Suburb Trust
----------------	-------------------------------

DOCUMENTS

- 1 Ingram Avenue - Area 14 Character Appraisal submitted by the Council
- 2 Winnington Road - Area 15 Character Appraisal submitted by the Council
- 3 Barnet Local Plan Core Strategy September 2012 policy CS5 submitted by the Council
- 4 Works at 31 Ingram Avenue, London: Heritage Summary Statement submitted by the appellant

PLANS

- A Plan 1113-EX2-200 submitted by the Council