



Appeal Decision

Site visits made on 12 September 2019, 14 November 2019 and 29 January 2020

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th February 2020

Appeal Ref: APP/G5750/C/18/3210551

Land at 81 High Street South, East Ham, London E6 6EJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Abi Oduyelu against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 3 August 2018 under ref. 18/00488/ENFC.
 - The breach of planning control as alleged in the notice is: *Without planning permission the erection of a boundary wall (partially comprising additions to an existing rear boundary wall).*
 - The requirements of the notice are to:
 1. *Demolish the boundary wall (partially comprising additions to an existing rear boundary wall), as shown outlined in yellow on the photographs attached at Appendix 1, and in the approximate location delineated in blue on the attached plan.*
 2. *On completion of step 1 above, remove all materials and debris from the site.*
 - The period for compliance with these requirements is 3 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act as amended.
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Decision

1. The appeal is dismissed, 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.

Background and matters of clarification

2. No. 81 is a 2-storey, residential property situated in a prominent location at the end of a terrace and next to the junction between High Street South and Tilbury Road. There is a vehicular access to the property off Tilbury Road. The rear yard is mostly given over to hardstanding.
3. The building operations attacked by the enforcement notice essentially relate to a raised rear boundary wall between the back yards of nos 79 and 81 High Street South. This seems to have involved some additions and alterations to the original brick boundary wall and the addition of a new cement-rendered boundary wall on the side facing no. 81. Measurements taken and agreed with the parties at my second site visit revealed that the wall facing no. 81 reaches about 2.53 m in height measured from the lower portion of the hardstanding,

whilst the posts, which support barbed wire and are fixed to the top of the wall, reach another 0.46 m in height.

4. On my third and final visit, I was able to inspect the development from the property at no. 79. The appellant was not in attendance so I carried out an unaccompanied site inspection after the occupier of no. 79 granted access. The boundary wall reaches about 2.42 m above the ground level in this garden, measured from a point roughly corresponding to where the 2.53 m height measurement was taken on the other side.
5. The Newham Local Plan was adopted in December 2018, shortly after the enforcement notice was issued. As a consequence, the London Borough of Newham Local Plan: Core Strategy (January 2012) and the London Borough of Newham Local Plan: Detailed Sites and Policies Development Plan Document (October 2016) have been withdrawn. I have dealt with the appeal on the basis of these up-to-date Local Plan policies, which were effectively carried forward from the London Borough of Newham Local Plan (February 2018) Secretary of State Submission Version, as referred to in the enforcement notice. The Newham Local Plan is the most relevant part of the development plan for the purposes of this case.
6. An updated version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. However, the sections relevant to it have not materially altered.

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

7. This ground of appeal is that planning permission ought to be granted for what is alleged in the enforcement notice. Reading the reasons given in the notice for its issue, I consider the main issues are the impacts of the boundary wall upon the character of the surroundings and upon the amenities enjoyed by the occupiers of the neighbouring property at 79 High Street South.
8. The boundary wall is not directly adjacent to Tilbury Road. However, it reaches roughly level with the top of the closest ground floor window at the appeal property and rises well above the substantial roadside boundary wall (about 1.85 m high) and vehicular access gates (about 2.10 m high) there. The subject boundary structure's excessive height (virtually 3.00 m tall to the top of the posts holding the barbed wire) draws the eye of passers-by on Tilbury Road, especially those on the footway on the opposite side of the road. The arrangement of barbed wire and posts on top of the wall appears most unfortunate in these public views.
9. Within the appeal site's context, like the Council, I am most concerned about how the development appears in closer range views from the rear of no. 79. Here, the excessive height, combined with the poorly laid and incompatible patchwork of bricks, the exposed breeze blocks and the arrangement of barbed wire and posts, produces an imposing, disjointed, uncompromising and unattractive boundary feature. The overall effect is most unlike the more modest boundary fencing and walling typically found at the rear of other properties in the locality. The development is out of character with the surroundings of this rear garden environment.

10. For reasons of location and building layout, I am satisfied that the boundary wall does not have a materially adverse effect upon the outlook from, the light reaching or the ventilation of the rear ground floor habitable rooms of no. 79. However, I do share the Council's concern that the structure reaches such a height on the common boundary that it has serious overshadowing and overbearing effects upon any users of the immediately adjacent rear garden at no. 79 to the north. The overbearing effects on outlook are made worse by the visually unattractive appearance of the boundary wall. It is an unneighbourly development.
11. The development fails to respect what I consider to be the most relevant policies of the Newham Local Plan, namely Policies SP3 Quality Urban Design within Places and SP8 Ensuring Neighbourly Development. These policies, when read together, place emphasis upon securing high quality design which should not result in adverse impacts on surrounding occupiers and are consistent with the Framework.
12. The appellant explains that the boundary wall was raised because of incidences with intruders and burglars which persisted after a burglar alarm and CCTV had been installed. Ever since the boundary wall was raised, it is said that the appellant and his family have enjoyed a greater degree of safety and security. Disturbance to neighbours from the ringing of the burglar alarm and the need to call out the police have been eliminated.
13. Improving security and safety and lessening the fear of crime are part of the Council's strategy to achieve quality urban design and ensure neighbourly development, as expressed within Newham Local Plan Policies SP3 and SP8. Whilst I am therefore bound to attach weight to these considerations, the appellant's experiences have not been corroborated by any reports from the Metropolitan Police. Moreover, I do not know whether the raising of the boundary wall was the only practicable solution, whether it was implemented to the specific recommendations of the Metropolitan Police or whether the appellant found this solution in the relevant Secured by Design documents mentioned under Policy SP8. As things stand, I judge that the harm caused by the solution chosen outweighs the safety and security considerations raised by the appellant.
14. I find on the main issue that the boundary wall harmfully affects the character of the surroundings and the amenities enjoyed by the occupiers of the neighbouring property at 79 High Street South. There is conflict with the development plan and I find no material considerations of sufficient weight to justify a grant of planning permission.
15. Taking into account all other matters raised, I conclude that the appeal on ground (a) should fail and that planning permission should not be granted on the deemed planning application.

The appeal on ground (f)

16. This ground allows arguments to be put that the steps required by the enforcement notice to be taken exceed what is necessary to remedy the breach

of planning control, or as the case may be, to remedy any injury to amenity which has been caused by the breach.

17. The purpose of this notice's requirements is to remedy the breach of planning control in accordance with section 173(4) (a) of the Act. It is reasonable and not excessive to require that the unauthorised operational development be removed. This would remedy the breach and nothing more.
18. I have not been provided with any clear evidence to demonstrate that the steps can be reduced, whilst still achieving that purpose. A fully worked out alternative scheme, with detailed plans, has not been submitted for consideration.
19. The appellant, however, suggests that as the height of the boundary wall before it was raised was 2.45 m, he would be prepared to reduce the boundary wall to that height and then add an additional feature (such as a solid metal fence or solid barbed wire or a trellis or any other form of deterrent acceptable to the Council) on top to about 0.45 m in height. From what I saw and from what the Council says, it appears that only a very small part of the original boundary wall reached a height of 2.45 m. The rest of the wall was notably lower. It is not clear from which side the appellant's remedial step is to be measured from. Nonetheless, from his own side, reducing the overall boundary structure from 2.99 m high to 2.90 m high would plainly neither remedy the breach of planning control nor remedy the injury to amenity caused by the breach.
20. In the light of all this, the appeal brought under ground (f) must fail. I should add that the appellant still has the option of approaching the Council to see whether any alternative schemes would be acceptable since the Council has discretion under section 173A (1) (b) of the Act to waive or relax any requirement of the notice including extending the period for compliance.

Andrew Dale

INSPECTOR