



Appeal Decision

Site visit made on 3 December 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2020

Appeal Ref: APP/U5360/C/19/3227367

Land at 7 Clarke Path, London N16 6QE

- 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 Solomon Gluck against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 27 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission, operational development comprising the erection of a wooden boundary fence to the front of the property.
 - The requirements of the notice are:
 - (1) Reduce the wooden fence to 1 metre in height or less.
 - (2) Make good all damage to the property resulting from compliance with requirement 1 of the notice.
 - (3) Remove all waste, materials, equipment and debris from the property resulting from compliance with the requirements of this notice.
 - The period for compliance with the requirements is one month.
 - 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.
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Decision

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

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

2. The main issues are the effect of the fence on the character and appearance of the area and on the comfort and safety of users of the adjacent footpath.
3. The fence is constructed of close boarded timber and surrounds the front garden of a three storey relatively modern mid-terrace house. The terrace is part of a cul-de-sac of terraces with a largely uniform appearance.
4. The Council's Local Development Framework Supplementary Planning Document Residential Extensions and Alterations Approved April 2009 (SPD) sets out design principles for front gardens and boundary treatments and states that it may be appropriate for new boundary treatments to match the style of original boundary treatments and railings on adjoining properties.
5. I noted at my site visit that neighbouring dwellings and others in the neighbouring Walsham Close, have low picket style fences which appear to be the original boundary treatment and around those dwellings, where they have been retained, they have a more uniform and open appearance.

6. The access to those dwellings in Clarke Path is via a relatively narrow footpath and there is no vehicular access. The garden to 7 Clarke Path fronts the footpath and the fence is erected right up to the line of the footway. The front garden is modest in size and consequently the fence appears substantial in height in this setting, combined with its solid appearance it appears as an obtrusive feature and is at odds with the softer and more open boundary treatment of neighbouring dwellings. Although not prominent in wider public views outside of Clarke Path and its effect is reasonably localised in its extent, it nevertheless causes material harm to the character and appearance of the area.
7. I observed at my site visit that a number of houses in Clarke Path have erected similarly tall fences and noted a number of tall fences in Walsham Close. However, I do not know the circumstances of those developments being permitted or whether the Council has control over them. In any event, the slow degradation of the area by the erection of substantial fences of varying appearance does not provide a reason for allowing this development which causes further harm.
8. The appellant supported by third party representations, states that the fence is required for safety and security purposes, in the interests of the well-being of children. However, whilst I have some sympathy there is no evidence that the desired safety and security could not be provided by other measures including lower boundary treatment. As such this is a matter of limited weight.
9. Overall, I conclude that the fence is contrary to Policy CS24 of the Hackney Local Development Framework Core Strategy Hackney's strategic planning policies for 2010 – 2025 Adopted November 2010, Policy DM1 of the Hackney Development Management Local Plan Adopted July 2015 (the Local Plan) and Policies 7.4 and 7.6 of The London Plan (2016). Together these seek development of the highest architectural quality, which reinforces and complements local distinctiveness and vernacular to create a positive sense of place. It also conflicts with the design aims of the National Planning Policy Framework.
10. There is a tall panel fence surrounding a garden on the opposite side of the footpath however, I do not consider that the appeal scheme creates an unacceptable sense of enclosure on the footpath as there is only a short distance where the fences are directly opposite one another. Accordingly, I conclude there is no harm to the safety and well being of users of the footpath in accordance with the aims of Policies DM45 and DM46 of the Local Plan. These state that the Council will not permit development which has a detrimental amenity impact on other highway users, including pedestrians, and require development proposals to take full account of the needs of pedestrians.
11. The Council also refer to Policy DM44 of the Local Plan which relates to Movement Hierarchy. However, in the absence of any explanation I find that this policy is not directly relevant to this main issue and weighs neither for nor against the development.
12. The appellant refers to Council guidance which allows for 1m high fences for front gardens however, it is unclear where this guidance comes from and as such it has had no bearing on my assessment of the planning merits of the appeal scheme.

Other Matters

13. The Framework states that there are three overarching objectives to achieving sustainable development which are mutually dependent; these are economic, social and environmental. The harm to the character and appearance of the area means that the environmental objective of sustainable development would not be achieved. As such the proposal does not represent sustainable development when considered against the policies in the Framework taken as a whole.
14. The appellant refers to appeal decisions elsewhere in respect of other means of enclosure and fences however, little detail has been provided. In any event, I am mindful that the circumstances relating to such developments are likely to be specific to their location and unlikely to be directly comparable.
15. I acknowledge that the appellant has submitted two retrospective planning applications for the fence which were subsequently refused and a further application which proposed an alternative design which was subsequently withdrawn. However, this and that the site is not in a conservation area and is not a listed building are neutral matters which cannot outweigh the identified harm.
16. The appellant states that they made a telephone call to Hackney Leasehold and Right to Buy Services who told them that a fence up to 2m in height is allowed. This advice is not a formal decision of the local planning authority and as such has no bearing on the planning merits of the case.

Conclusion

17. For the above reasons and with regard to all other matters raised, I find that the appeal on ground (a) fails.

The appeal on ground (f)

18. An appeal on ground (f) is a claim that the requirements of the notice 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.
19. As the enforcement notice requires the fence to be reduced in height to 1m, a height equivalent to that which could have been erected as permitted development, as an alternative to complete removal, the purpose is therefore to remedy the injury to amenity that has occurred.
20. Under this ground of appeal the appellant has submitted plans which show an alternative boundary treatment. However, that proposal does not form part of the matters alleged in the enforcement notice and therefore I do not have the power to consider this scheme as part of the appeal process.
21. The appellant states that they would be willing to lower the fence to that height which has already been agreed with the Council. In this regard the appellant has provided an email from an officer of the Council which states that officers advised that a compromise of 1.25m was made, and comments about a meeting with the 'state officer' where it was agreed with a neighbour to reduce the height of the fence to 1.55m.

22. It is not clear whether the appellant proposes to reduce the height to 1.25m or 1.55m and there are no plans or details showing how the fence would look as altered. As such, whilst I have found no harm in respect of pedestrian comfort or safety, I cannot be certain that lowering the height of the fence to either 1.25m or 1.55m would remedy the harm to the character and appearance of the area resulting from its height, particularly when viewed in relation to neighbouring lower boundary treatments.
23. In order to remedy the injury to amenity, it is not excessive to require the fence to be reduced to 1m in height or less and to permanently remove all resulting materials from the site. I conclude that no lesser steps would remedy the injury to amenity which has been caused by the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

Conclusion

24. 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 on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR