



Appeal Decision

Site visit made on 14 February 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 1 March 2020

Appeal Ref: APP/H5960/C/19/3230363

14 Granard Avenue, London SW15 6HJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Shahid Amin against an enforcement notice issued by the Council of the London Borough of Wandsworth.
- The enforcement notice was issued on 18 April 2019.
- The breach of planning control as alleged in the notice is without planning permission, and within the last four (4) years, the unauthorised installation of boundary treatments consisting of a mixture of timber, brick, metal mesh and wire materials ranging from 2.8m to 3.8m in height.
- The requirements of the notice are:
 - 1) Remove all unauthorised boundary treatments and re-instate the boundary treatment to match the former boundary treatment at the Property.
 - 2) At a minimum these works this [sic] shall include removing:
 - a) All brackets and horizontal timber boards above the existing masonry wall on the south-west boundary of the Property;
 - b) All horizontal timber boards, wire mesh, barbed wire, and any associated supports on the north and north-east boundaries of the Property;
 - c) The brick wall behind the original wooden fence on the west boundary of the Property; and
 - d) Remove the horizontal timber boards, wire mesh, barbed wire, and any associated supports above the brick wall and original wooden fence on the west boundary of the Property.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (f) and (g) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appeal is proceeding with Mr Shahid Amin as the sole appellant. I understand that an appeal under the name of a second appellant was submitted in error and that appeal has been closed¹.
2. The appellant indicates that the use of the word “appears” in the enforcement notice renders it invalid. Section 172 of the 1990 Act as amended states that the local authority may issue a notice where it *appears* to them that (a) there has been a breach of planning control and (b) it is expedient to issue the notice. The reasons for issuing the notice, as specified in its paragraph 4, deal

¹ Ref APP/H5960/C/19/3230343.

with the latter point. There is nothing before me to show the notice is a nullity or otherwise invalid.

3. The appellant also argues that the party seeking to take enforcement action must prove their case with supporting evidence. However, in 'legal' grounds of appeal, the onus of proof is firmly upon the appellant. In *Gabbitas*² the Courts have held that the relevant test of the evidence on matters such as legal grounds of appeal is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
4. The planning merits of the proposal are not before me as there is no ground (a) appeal and associated deemed planning application. Hence, the existence of other fences in the area, particularly along Church Walk, cannot be taken into account.
5. The appellant indicates that the development is immune from enforcement action due to the passage of time that has elapsed since the works were substantially complete. Although it was not apparent from the appeal form, I have considered this matter as a further ground of appeal under ground (d), below.
6. The appellant now accepts that the matters alleged have occurred as a matter of fact³. Consequently, I have not considered the original ground (b) appeal. This ground would be at odds with any evidence submitted in relation to ground (d) in any event.
7. I understand that the fence has been altered in recent months. For the avoidance of doubt, the matters before me are those which existed at the date the notice was served.

The appeal on ground (c)

8. In order to succeed on an appeal on ground (c), the appellant must show on the balance of probability that the matters alleged do not constitute a breach of planning control.
9. Under Article 3 and Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), deemed planning permission is granted for gates, fences, walls or other means of enclosure subject to certain conditions and limitations. Development is not permitted by Class A if, A.1(b), the height of the fence, wall or means of enclosure would exceed 2m above ground level or (c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (b) as the height appropriate to it if erected or constructed, whichever is the greater.

² *Gabbitas v Secretary of State for the Environment* [1985] JPL 630.

³ Paragraph 4.1 of Appellant's statement.

10. The appellant draws my attention to a letter from the Council dated 29 January 2016 which, he says, neither confirms nor denies that the fence or works are in breach of planning control. I have been provided with a copy of that letter. It states that the outbuilding in the rear garden is 'permitted development' and is not in breach of planning control. However, the same letter describes a boundary wall measuring 2.5m in height which has been erected and is "unauthorised in planning terms". It is clear from this statement that the Council had identified what it considered to be a breach of planning control. Moreover, a further letter dated 29 November 2018 confirmed that the boundary treatments would require planning permission.
11. I note that, in the 2016 letter, the Council stated the 2.5m wall was not causing harm to neighbouring amenity and it was not considered expedient to take enforcement action. However, it is explained that a further site visit on 14 February 2019 found additional works, which has resulted in an increase in the height of the boundary treatment. This included the addition of horizontal timber boards over the wall on the boundary with No 16; horizontal timber boards, wire mesh and barbed wire over the fence on the north and north-eastern boundaries; and horizontal wooden boards, wire mesh and barbed wire over the fence and new wall on the western boundary. This is largely consistent with what I saw on site. As such, the officer's advice regarding expediency is not relevant as it related to a different structure. In any event, lack of expediency is not an indication that there has not been a breach of planning control.
12. The appellant claims that the Council's measurements are inaccurate as they have failed to take account of the uneven ground surface and other external elements. It is explained that, at the time of the Council's inspection, the ground level in the north-west corner of the garden was temporarily lower, which gave a false impression of the height of the fence. Further, it is argued that the height of the fence should be measured from the damp proof course, not from the top of the foundations as measured by the Council's enforcement officer.
13. Firstly, it is clear from the GPDO that the measurement is taken from ground level. If the Council measured from the top of the foundation, as described, this would have taken account of any temporary changes in levels. While I saw that the house sits at a lower level than the road, there is no significant difference in levels at the boundaries targeted by the notice. Putney Park Lane is on an incline and the fence increases in height accordingly. As such, the change in levels is immaterial.
14. I conclude from the evidence before me that the matters alleged constitute development under Section 55 of the 1990 Act, and do not fall within that permitted under Article 3 and Schedule 2, Part 2, Class A of the GPDO. There is no evidence that express planning permission has been granted for the matters alleged, therefore they constitute a breach of planning control. The appeal on ground (c) fails, therefore.

The appeal on ground (d)

15. For the appeal to succeed on ground (d), the onus is on the appellant to demonstrate that, on the balance of probability, those matters alleged in the enforcement notice were substantially complete for four years or more, prior to the issue of the notice, such that it is too late for the Council to take action.

16. The appellant purchased the property in 1990. I understand that it has been targeted by burglars over the years, which led to boundary reinforcements following the advice of the police in 1994. Although the appellant claims the works were carried out many years ago, there is very limited supporting evidence. The photographs provided are unclear and are mostly undated or were taken after the relevant date⁴.
17. Conversely, the Council advises that the matters alleged were brought to their attention in October 2018. Due to the lack of substantive evidence to support the appellant's case, the appeal on ground (d) must fail.

The appeal on ground (f)

18. Section 173(4) of the 1990 Act as amended indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred. The second is to remedy any injury to amenity which has been caused by the breach. In this case, the reasons for issuing the notice refer to the effect of the development on the public realm and neighbouring properties. It is apparent that the purpose of the notice is to remedy the breach of planning control. What must be considered is whether the requirements of the notice exceed what is necessary to achieve that purpose.
19. There is no information to support this ground of appeal, other than an indication that the boundary treatment should be lowered to 2.5m, as this was considered not to cause significant harm to neighbouring amenity. However, the notice is not seeking the total removal of the boundary treatment, but to re-instate it to its former state. This is reasonable in the circumstances.
20. Therefore, I find that the steps required by the notice are necessary to remedy the breach of planning control and the appeal on ground (f) must fail.

The appeal on ground (g)

21. The appeal on ground (g) is that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed. No preferred timescale is suggested. However, the appellant has provided detailed evidence in relation to his personal circumstances. Age and disability are 'relevant protected characteristics' for the purposes of the Equality Act 2010 and the Public Sector Equality Duty. The proposal would enable the appellant to retain the boundary treatment at a height which he considers is necessary for security. However, the harm resulting from the development would be significant and the negative impact on the appellant of dismissing this appeal would not outweigh the conflict with local planning policy, especially given that the Council is not seeking the total removal of the boundary treatment.
22. The appellant's rights under the European Convention on Human Rights, which is incorporated into the Human Rights Act 1998, must be considered. Article 8 deals with the right to respect for family life and the home. Dismissal of this appeal will require the appellant to reduce the height of the boundary treatment which may affect security. This would represent an interference with their home and family life. However, the conflict with local planning policy which would arise, in particular the fact that the development is incompatible with the surrounding development, is significant. I am satisfied that the

⁴ 18 April 2015.

legitimate aim of conforming with planning policy cannot be achieved by any means which are less interfering with the appellant's rights.

23. I appreciate that this decision will lead to stress and uncertainty for the appellant, who has ongoing medical issues. Consequently, I accept the appellant's request that the time for compliance be extended. This would enable him to consider alternative security measures. However, this must be balanced against the need to address the harm resulting from the breach of planning control. As the works themselves are relatively minor, I consider that four months is an adequate length of time for the security advice to be obtained and for the works to be completed. As such, the interference with home and family life is proportionate and necessary in the circumstances and would not result in a violation of their rights under Article 8.

24. To this limited extent, the appeal on ground (g) succeeds.

Conclusion

25. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

26. It is directed that the enforcement notice is varied by the deletion of three months and the substitution of four months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Debbie Moore

Inspector