



Appeal Decision

Site visit made on 3 February 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2020

Appeal Ref: APP/U5360/C/19/3232620

Land at 94 Manor Road, Hackney, London N16 5BN

- 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 Mrs Bracha Betty Canzee against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 31 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission the alteration of a boundary wall and the installation of new timber boundary gate.
 - The requirements of the notice are:
 - (1) Remove the unauthorised timber gate/boundary treatment in its entirety
 - (2) Lower the wall to its height before the unauthorised works were carried out.
 - (3) Reinstate and rebuild that section of the wall which the timber gate is currently situated with materials to match the existing wall
 - (4) Make good all damage to the Property resulting from compliance with the other requirements of the notice.
 - (5) Remove all waste, materials, equipment, and debris from the Property resulting from compliance with the requirements in paragraphs 5(1) to (4) of this notice.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)[a], [f] and [g] 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.

Ground (a)

Main Issues

2. The main issues are the effect of the appeal scheme on:
 - The character and appearance of the area; and
 - Highway safety.

Reasons

Character and appearance

3. The appeal site is located in a generally residential area and comprises a substantial semi-detached dwelling which fronts onto Manor Road. The wall and gate, the subject of this appeal, are located to the rear of the property and face onto Heathland Road. Boundary treatments along this section of Heathland

Road are generally characterised by low level brick walls with hedging and/or metal fencing above, set around modest front gardens.

4. Policy 24 of the London Borough of Hackney LDF Core Strategy (CS)(2010) seeks to ensure that development respects the architectural, historic quality and character of the surrounding environment, amongst other things. Policy DM1 of the London Borough of Hackney Development Management Local Plan (DMLP) (2015) seeks to ensure that development reinforces and complements local distinctiveness and vernacular to create a positive sense of place.
5. Policy 7.4 of the London Plan (LP)(2016) states that buildings, streets and open spaces should provide a high quality design response that, amongst other things, allows existing buildings and structures that make a positive contribution to the character of a place to influence the future character of the area. Policy 7.6 of the LP states that buildings and structures should be of the highest architectural quality and, amongst other things, should comprise details and materials that complement, not necessarily replicate, the local architectural character.
6. The wall has been extended vertically using a brick which contrasts significantly with the brick below. The gate, which is mostly coloured black, appears in poor condition with timber exposed around some of the edges. Such features are not typical of the area and whilst I saw that contrasting brick has been used elsewhere at the appeal site, the unauthorised gate and brickwork appears an incongruous feature which diminishes the character and appearance of the area, contrary to Policy 24 of the CS, Policy DM1 of the DMLP and Policies 7.4 and 7.6 of the LP, the requirements of which are set out above.
7. The appellant suggests that the wooden gate could be replaced with a metal gate and has provided a photograph, presumably to indicate the type of gate which could be erected. However, whilst I saw that low level metal fencing is used elsewhere along Heathland Road, such substantial metal gates are not characteristic of the area and would also appear incongruous.

Highway safety

8. The appeal site is located in a generally residential area with the wall and gate fronting onto Heathland Road. The gate is located close to an existing vehicular access into the site, near the junction with Manor Road. I saw that there is no vehicle crossover in front of the gate and at the time of my visit a vehicle was parked in front of it.
9. Policy 6 of the CS seeks to mitigate any potentially negative impacts of development on the transport network. Policy DM45 of the DMLP states that the Council will not permit development where it is considered the proposal will have a detrimental safety or amenity impact on other highway users, including pedestrians and cyclists. The supporting statement for the policy advises that the creation of vehicular access can cause danger or delays to other road users, and needs to be avoided.
10. However, there is no drop kerb in front of the gates and no engineering works appear to have been carried out which would enable vehicular access. In my view, the installation of the gate itself does not amount to the formation of a vehicular access and the alleged breach identified on the enforcement notice

does not include the creation of a vehicular access, nor does it require the cessation of the use of the gates.

11. The appellant asserts that the gates make it much safer for cars to go in and out. However, given the above I afford negligible weight to this matter. Since the gates do not comprise a vehicular access, I do not consider that there is any harm to highway safety and therefore no conflict with Policy 6 of the CS or Policy DM45 of the DMLP in this regard.

Ground (f)

12. Section 173 of the Town and Country Planning Act 1990 (as amended) states that (3) an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes. (4) Those purposes are – (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.
13. Section 174 (2)(f) of the Town and Country Planning Act 1990 (as amended) allows for an appeal on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
14. From the evidence before me it appears that the purpose of the requirements are to remedy the breach. Section 173(5) of the Town and Country Planning Act (As amended) states that an enforcement notice may require the carrying out of any building or other operations. Since a section of the wall was removed to enable the installation of the gates, I consider it reasonable to require that section is reinstated. It is also reasonable to require that the wall is lowered to its height before the unauthorised works were carried out since this would restore the land to its condition before the breach took place.
15. An interested party asserts that the requirements set out in the notice are the minimum that should be done and that damage to the public footpath should also be looked into. However, this would expand the requirements of the notice and would exceed what is necessary to remedy the breach.
16. The appellant has suggested that the wooden fence could be replaced in a metal fence that fits better into the street scene. However, this would not remedy the breach. Furthermore, as set out above, gates would itself appear an incongruous feature.
17. Given the above, I consider that the requirements fall within the purpose of S173(4)(a) of the Act and are not excessive. Consequently, the ground (f) appeal fails.

Ground (g)

18. An appeal on ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant submits that 6-9 months is required to rearrange the

turning points for vehicles going in and out. However, as set out above, I do not consider that a vehicular access has been created. The use of the gates by vehicles with no crossover and no restriction on the way in which vehicles use the site could result in harm to highway safety. It is therefore not desirable to extend the period for compliance.

19. Given the nature and scale of the works required, I consider 3 months is sufficient time to enable the works to be undertaken. Accordingly, the appeal on ground (g) fails.

Conclusion

20. 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 deemed application.

M Savage

INSPECTOR