



Appeal Decision

Site visit made on 17 June 2020

by Richard S Jones BA (Hons), BTP, MRTPI

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

Decision date: 06 August 2020

Appeal Ref: APP/P4605/C/19/3237433

62 Russell Road, Moseley, Birmingham, B13 8RF

- 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 Kishore Ishverial Pareka against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice, numbered 2018/1797/ENF, was issued on 22 August 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of metal railings and installation of gates to the front of the land.
 - The requirements of the notice are to reduce the height of the gates and railings to no more than one metre and remove from the land any materials resulting from the height reduction works; or remove the gates and railings in their entirety and restore the land to its original condition.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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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 Town and Country Planning Act 1990 as amended for the development already carried out, namely the erection of metal railings and installation of gates to the front of the land at 62 Russell Road, Moseley, Birmingham, B13 8RF.

Main Issue

2. The main issues are:
 - the effect of the alleged railings and gates on the character and appearance of the appeal site and surrounding area, with regard to their effect on the character and appearance of the Moseley Conservation Area; and
 - their effect on highway safety.

Reasons

Character and appearance

3. The appeal relates to a large detached residential property situated within Moseley Conservation Area. The alleged metal railings sit on top of a brick wall with a stone capping whilst the alleged gates – there are two sets of double leaf swing gates – are attached to pillars positioned towards the outer edges of the of site frontage.

4. The special interest of the conservation area is derived from it covering a suburb that was developed from around 1860 through to the Interwar period, and so includes a wide variety of architectural styles. The houses in Russell Road were built in the first three decades of the 20th Century and combine Edwardian and Interwar houses. Many are individually designed in the Arts and Crafts Revival style by a number of recognised Birmingham architects.
5. The Moseley Conservation Area Character Appraisal and Management Plan March 2005 highlights that walls contribute significantly to the character of the conservation area by defining public and private spaces and informing the use of specific materials. It explains that residential properties were historically defined by low sandstone, limestone or rubble walls with native hedging behind. This largely reflects my own observations of many of the boundary treatments along Russell Road, which combine with the frontage and street trees to create its verdant, suburban character.
6. The Council thus argues that the development conflicts with the Moseley Conservation Area Character Appraisal and Management Plan (2005), which states that the removal or partial removal of boundary walls will not be permitted, and that any replacement made to a wall is to be built using the aforementioned traditional materials of a suitable design, to keep within character of the conservation area.
7. It is true that the brick wall on the site is not built of traditional materials, but it and indeed the pillars which form part of it are outside the scope of the notice and thus this appeal. I can only consider the merits of the alleged railings and gates, which are approximately 1.7m and 1.9m high respectively. The railings comprise metal rails that are slim, well-spaced and dark in colour; the gates are similar but arched and with some decorative metalwork motifs. I saw that the alleged structures are lower in height and less conspicuous than the brick pillars. They do not impede or detract from views of the appeal house which has itself been enlarged and altered.
8. I also find that the railings and gates are not so substantial so as to dominate the frontage as the Council suggests. The appeal front garden appears somewhat stark because it contains much less established greenery than the typically verdant plots nearby. However, there are immature trees and shrubs on the site which, in time, should grow enough to be seen through and indeed soften the appearance of the railings. Dismissing the appeal would not necessarily lead to any increase in the planting on the land – and, even as things stand, the railings and gates do not look obtrusive within the street scene.
9. The appellant has provided photographic evidence of similar boundary treatments next door at No. 64 Russell Road – and at a significant number of other nearby properties, nearly all of which I saw during my site visit. Although metal railings and gates are not predominant, they are prevalent enough to not appear incongruous. Similarly, the appellant's evidence also demonstrates, and my site visit corroborated that there is variation in the height of enclosures.
10. I would not allow this appeal simply on the basis that there are nearby metal railings and gates, since I do not know the circumstances in which they were erected. I note that the Council has refused some 12 applications for similar boundary treatments on Russell Road, while others may have been required to be removed – or erected prior to the setting up of the Russell Road Residents'

Association. However, none of these points alter my view that the appeal railings and gates are not so dominant or inconsistent so as to detract from the appearance of the property or wider area. That there are similar boundary treatments nearby adds weight to that finding but is not decisive.

11. I understand the frustrations of interested parties that the railings and gates have been installed without the benefit of planning permission. I also fully appreciate concerns expressed over the harm to a conservation area arising from the loss of characteristic features. However, as noted above, the matters set out in the notice do not include the loss of a traditional wall. I note that an interested party has highlighted a preference for an open plan design, but that is not the prevailing character of the street.
12. For the reasons explained, I conclude that the alleged railings and gates cause no unacceptable harm to the character and appearance of the appeal site and surrounding area, and they preserve the character and appearance of the Moseley Conservation Area. Thus, the development does not conflict with Policies TP12 or PG3 of the Birmingham Development Plan 2031 (BDP), the National Planning Policy Framework (NPPF), the Moseley Conservation Area Character Appraisal and Management Plan or the Extending Your Own Home Supplementary Planning Document, which expect great weight to be given to the conservation of heritage assets such as conservation areas, and new development to demonstrate high quality design which reinforces or creates a positive sense of place and local distinctiveness.

Highway safety

13. The Council objects that the alleged gates have a detrimental impact on the safe and free flow of pedestrians and vehicles on the adjoining highway - arising from a driver having to leave his or her car on the highway while the gates are opened to turn into the site.
14. I agree with the Council that the appeal could not be allowed on the basis of the appellant's promise to keep the gates open during the day - since that could not be enforced and the gates were installed for security reasons.
15. However, the Council has provided no evidence that the appeal gates have caused highway safety problems since they were installed. I saw that they would not be unusually time-consuming to open or close, and that the property benefits from two crossovers so that vehicles can be driven into and out of the site in a forward gear. Moreover, many nearby homeowners have installed frontage gates. Whether or not those developments were authorised, the Council has provided no evidence, such as road safety data or personal injury collision data to show that any local gates have resulted in conflict between pedestrians and vehicles, or a particular highway safety issue.
16. That lack of evidence is unsurprising because, in this as in any other suburban residential street, drivers will expect to be slowed down by others who are turning in and out of their properties.
17. I conclude that the Council has not demonstrated that the appeal development is unacceptably harmful to highway safety or in conflict with BDP Policy TP44 or the NPPF. These policies seek, amongst other things, to promote the efficient, effective and safe use of the existing transport network.

Other matters

18. I have noted the appellant's security concerns but he has provided no evidence that there is a high crime rate in this part of Russell Road – or that he has considered other options, such as CCTV and alarm systems. I have therefore attached little weight to the security concerns, but that does not alter my findings in favour of the appeal on the main issues.
19. I appreciate the precedent concerns expressed by the Council and Residents' Association, but I have properly considered the alleged development on its own individual merits and in accordance with local and national planning policy as they stand today. In this case, there is no loss of traditional boundary treatment and my decision would not set a precedent for development which is not policy-compliant.

Conclusion and Conditions

20. For the reasons given above, I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the development as described in the notice. Neither the Council nor any other party has suggested that conditions ought to be imposed on any grant of permission, and I find no conditions to be necessary.

Richard S Jones

INSPECTOR