

Appeal Decision

Site visit made on 16 April 2021

by K E Down MA(Oxon) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 May 2021

Appeal Ref: APP/Q5300/D/20/3264252

Rye Cottage, 99 Trent Gardens, London, N14 4QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs Eleanor Petrou against the decision of the Council of the London Borough of Enfield.
 - The application Ref 20/01287/HOU, dated 23 April 2020, was refused by notice dated 5 October 2020.
 - The development proposed is to erect a 6ft fence with 3ft trellis attached on top at the bottom of the garden to offer privacy and security after losing conifers to decease [sic] last year.
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Application for Costs

1. An application for costs was made by Mrs Eleanor Petrou against the Council of the London Borough of Enfield. This application is the subject of a separate decision.

Decision

2. The appeal is dismissed.

Main Issues

3. There are two main issues. Firstly, the effect of the proposed fence and trellis on the living conditions of occupiers of dwellings in Dorchester Court; and secondly, the effect of the proposed fence and trellis on the character and appearance of the area with respect to the pattern of development.

Procedural matter

4. The appellant believed that the replacement of the original structure amounted to permitted development. The Council disagreed. It is not before me, in the context of this appeal under s78 of the Town and Country Planning Act 1990 (the Act), to judge whether the replacement fence amounted to permitted development or not. I am only able to consider the appeal against the Council's refusal of planning permission which is what I have done. However, it would be open to the appellant to have this matter determined through the submission of an application under s191 of the Act for a Lawful Development Certificate. Any such application would be unaffected by my determination of this appeal.
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Reasons

5. The appeal relates to a fence and trellis that have been erected on the rear boundary of the appeal site at Rye Cottage. Rye Cottage and its next door neighbours (99a and 97) occupy an area of land to the rear of Trent Gardens and are orientated at right angles to properties in that street. In consequence, they back onto flats in Dorchester Court, a cul-de-sac off Trent Gardens. Rye Cottage has a garden some 16m deep. The closest dwellings to the rear are flats 13 and 14 which share part of the rear boundary and lie under 10m from it. Flat Nos 11 and 12 which share most of the boundary are further away, each having a tandem garden behind the building.
6. The appellant states that the fence and trellis are replacements of a similar fence and trellis that fell into disrepair. She has submitted evidence in the form of photographs, a statutory declaration and letters from contractors familiar with the site to this effect. From this evidence it is clear that there was a structure on the boundary that was, at least in part, of a similar height, although whether this extended at full height across the entire boundary is less clear due to conflicting evidence. It is also clear that until about 3 years ago the effect of this structure was softened by a line of taller conifers in the garden of the appeal property, most of which are understood to have died but some of which remain in a cut back state close to the rear boundary with 13 Dorchester Court. The trees effectively prevented intervisibility between the neighbouring properties, obscured the fence from the appeal property and provided a backdrop when viewed from properties in Dorchester Court.
7. The new fence is some 1.8m in height with a 1m trellis on top resulting in a structure some 2.8m high. This is set on an earth bank about 0.7m above the garden level at Rye Cottage and somewhat less above the gardens in Dorchester Court. The bank appears to be of long standing but does not appear to correspond with original ground levels on either side. Moreover, I note that the submitted plan showing existing and proposed sections is misleading because it shows the fence at ground level on the Dorchester Court side, which it is not. Overall, whether seen from the garden of Rye Cottage or from Dorchester Court the fence and trellis are undoubtedly tall structures.
8. The fence lies north-west of properties in Dorchester Court and hence there would be no material loss of sunlight. Moreover, I am not persuaded that any noticeable loss of daylight would occur. The fence is too far from windows in these dwellings to materially reduce daylight whilst the gardens of Nos 11 and 12 are open and bright. Although the garden serving No 13 is gloomier this is predominantly due to the presence of a large tree which overshadows much of the area.
9. When seen from windows in or the gardens of Nos 11 and 12 the fence is clearly visible but, owing to the separation distance from the dwellings and the open character of the gardens with low fencing separating them from the adjoining pair of flats, the effect is not unduly overbearing. That is not the case at No 13 where the fence and trellis project across about half of the rear boundary. The proximity to windows in the dwelling means that the fence and trellis appear as an enclosing and overbearing structure. The effect is also felt in the garden, with the fence extending significantly higher than the adjoining

fence separating the property from 97 Trent Gardens. It is therefore an oppressive structure when viewed from No 13.

10. It is concluded on the first main issue that although the proposed fence and trellis would have no material effect on sunlight or daylight reaching properties in Dorchester Court and would not be materially detrimental to the outlook from Nos 11 or 12 Dorchester Court it would appear as an overbearing and obtrusive structure when seen through windows and from the garden of No13. This would be materially harmful to the outlook from that property. In consequence, it would conflict with, in particular, Policy DMD8 of the Council's Development Management Document (DMD), 2014, which expects, amongst other things, that new residential development should be of an appropriate scale, bulk and massing and preserve amenity in terms of outlook. It would also conflict with the National Planning Policy Framework which expects development to create places with a high standard of amenity for existing and future users.
11. Turning to character and appearance, the proposed fence and trellis are barely visible from the public realm and only at a distance. In consequence, they have no material effect on the character or appearance of the wider area. Neither are they visually intrusive when seen from Nos 99a or 97 Trent Gardens. Fences form the predominant boundary treatment in the immediate vicinity of the appeal site and although most are no more than about 2m in height, the appeal fence replaces a similar structure and there is an existing fence and trellis of a similar height on the adjacent rear boundary at No 99a. This appears, from evidence of sun bleaching and the presence of algal growth, to have been in place for some time. Therefore, although the fence and trellis at Rye Cottage are tall, and prominent when seen from that dwelling and from properties to the rear in Dorchester Court, they generally correspond with the prevailing pattern of development in the area.
12. It is concluded on the second main issue that the proposed fence and trellis, would have no materially detrimental effect on the character or appearance of the area with respect to the pattern of development. I therefore find no conflict with Policy CP30 of The Enfield Plan, Core Strategy 2010-2025 or with DMD Policies DMD6 or DMD37 which, taken together, expect development to reinforce locally distinctive patterns of development, be of a scale and form appropriate to the character of the area and to create safe and secure places.
13. The appellant argues that a high fence and trellis are necessary in order to protect privacy at Rye Cottage. I have some sympathy. Owing to the modest increase in ground levels between the appeal site and the dwellings in Dorchester Court, without the trellis above the 1.8m fence, the garden and area at the rear of the dwelling would be directly overlooked from the first floor flat immediately to the rear. Although I estimate that the separation distance would be about 15m to the shared boundary there would be a perceived loss of privacy and overlooking which was not the case before the trees died.
14. Balancing the effects, although the fence and trellis would not materially harm the character or appearance of the area or the living conditions of occupiers of flats 11 and 12 and would prevent loss of privacy to Rye Cottage, this would not alter or outweigh the significant harm identified to the living conditions of occupiers of No 13 with respect to the overbearing effect of the fence and trellis and the loss of outlook.

15. For the reasons set out above and having regard to all other matters raised, including the planning history, a neighbour dispute and representations from neighbours at 99a and 97 Trent Gardens, I conclude that the appeal should be dismissed.

KE Down

INSPECTOR