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## Appeal Decision

Site visit made on 27 May 2021

**by D Fleming BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 June 2021**

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**Appeal Ref: APP/Y5420/C/20/3259233**

**106a Colney Hatch Lane, London N10 1EA**

- 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 Anton Dell against an enforcement notice issued by the Council of the London Borough of Haringey.
  - The enforcement notice was issued on 20 July 2020.
  - The breach of planning control as alleged in the notice is an unauthorised side boundary fence.
  - The requirements of the notice are:
    1. Remove the side boundary fence which adjoins 104 Colney Hatch Lane in its entirety.
    2. Remove all resultant debris.
  - The period for compliance with the requirements is three months.
  - 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 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 1990 Act as amended for the development already carried out, namely the erection of a side boundary fence on land at 106a Colney Hatch Lane, London N10 1EA referred to in the notice, subject to the following condition:
  - 1) The entire fencing hereby permitted shall be removed and all materials resulting from the demolition shall be removed from the site within one month of the date of failure to meet any one of the requirements set out in i) to iv) below:
    - i) Within one month of the date of this decision a) the modified fence panel with the slanting top rail, immediately perpendicular to the back edge of the footway shall be removed permanently from the site; and b) a soft landscaping scheme for the remaining fence panels shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
    - ii) If within ten months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

### **Procedural Matters**

- 2. The Council's reasons for issuing the notice refer to policies from The London Plan 2016. These have now been replaced since the appeal was submitted by The London Plan<sup>1</sup> published in 2021. The substance of the policies, as referred to in the notice, has not changed and therefore the appellant will not be prejudiced by my consideration of them in reaching my decision.
- 3. The Council has introduced an additional alleged harm within their Statement of Case, namely the effect of the development on the living conditions of the nearest neighbouring property. However, this was not stated in the reasons for issuing the notice and therefore does not fall to be considered in my decision.

### **The ground (a) appeal and the deemed planning application**

#### **Main Issues**

- 4. The main issues are the effect of the development on i) the Muswell Hill Conservation Area (CA), having regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA; and ii) highway safety.

#### **Reasons**

##### *Character and appearance*

- 5. The appeal site comprises an end of terrace property added to what was a Victorian-style detached dwelling. It has the benefit of a large front garden, which comprises a hard standing in the main.
- 6. The dwelling is situated in a CA that is centred on a residential Edwardian development that once formed a suburb to London. The CA has been expanded over the years and now includes the section of Colney Hatch Lane where the appeal site is located. Whilst the layout of most of the housing in the CA is mainly in the form of terraces, along Colney Hatch Lane from Alexandra Park Road to just beyond Barnard Hill, most buildings are semi-detached villas set back from the road with large front gardens. The distinctive character and appearance of the CA stems in part from its elevated position, which allows for long views, and the homogeneity and high quality of the housing with mature front gardens.

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<sup>1</sup> The London Plan, The Spatial Development Strategy for Greater London, March 2021

7. The front garden of the appeal site has a shallow gradient which means that the low side boundary walls increase in height towards the road. The appellant has added three panels of a lattice-style fence to extend an existing close-boarded fence, near to the house, which is fixed to the top of the southern boundary wall. These panels are said to be 1.6m high but the panel nearest the road is lower. It has been modified so that it slopes downwards somewhat, towards the ground. The Council advise that the height of the boundary treatment including the wall varies between 2.2m and 2.7m.
8. I find that the fencing is not conspicuous in long distance views. This is due to the back drop of mature front gardens with hedging for side boundaries north and south of the appeal site, and several street trees, which together break up the views of it. The colour of the wood has also faded over time, which adds to its innocuous appearance from afar. It is only when in close proximity that it is noticeable and this is due to the fact that between Nos 98-110 Colney Hatch Lane, there is a long stretch of front gardens which have all being turned into hard standings with little or no soft landscaping. The clear delineation of each property in this stretch of dwellings along Colney Hatch Lane has been lost visually as front and side boundaries have been removed and the resulting open appearance detracts from the character and appearance of the area.
9. I find whilst the new fencing does not enhance the character or appearance of the CA, in the way that a replacement hedge would, it does preserve it. This is because it re-instates a strong visual separation between the properties, which is a distinctive feature of the CA.
10. The Council are concerned that it is the height of the fencing, in particular, that causes harm to what they assess as the open front garden character of the CA. However, other than the anomaly between Nos 98-110, I find one of the aspects of the character and appearance of the CA is now that of clearly enclosed front gardens. This can be seen not only south of the appeal site along Colney Hatch Lane but all across this large CA. I am supported in my view as the Council's Muswell Hill Character Appraisal<sup>2</sup> describes Colney Hatch Lane as having "substantial front gardens, many of which contain mature trees and dense shrubs that are prominent elements of the street scene." In addition, given the slab level of the building at the appeal site is significantly above the level of the road, the scale of the fencing is very much reduced when viewed against the backdrop of the building.
11. The appellant has offered to soften the appearance of the fencing with the addition of planting and at the site visit I saw that the owners of the property to the south have already planted three ornamental trees adjacent to the fencing. Should I find that overall, the fencing is acceptable, a condition could be imposed to require the submission, approval and implementation of a planting scheme. This would enable the fencing to enhance the character and appearance of the CA.
12. For these reasons I conclude with an appropriate condition that the development does not result in harm to the character or appearance of the CA. It therefore accords with Policies D3 and HC1 of The London Plan, Policies SP11

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<sup>2</sup> Paragraph 6.5 Council's Statement of Case; the Muswell Hill Character Appraisal was not submitted with the appeal questionnaire.

an SP12 of Haringey's Local Plan<sup>3</sup> and Policies DM1 and DM9 of Haringey's Development Management DPD (the DPD)<sup>4</sup>. These require, amongst other matters, that heritage assets are enhanced, that development proposals should have regard to maintaining a sense of enclosure and that proposals for altering buildings should not appear overbearing or intrusive.

#### *Highway safety*

13. Colney Hatch Lane is a busy arterial road along which there are several bus routes. There is a designated bus lane along part of the road that operates between 7:00am and 10:00am Monday to Friday and the road markings for this begin in the vicinity of the appeal site. Speed is also limited to 20 mph along this stretch of the road and parking is permitted on the pavement on both sides of the road in the vicinity of the appeal site. In addition, there is a traffic regulation order outside the appeal site preventing on-street parking and loading during the operation of the bus lane.
14. In this context the Council are concerned that the new fencing partly obscures the intervisibility between manoeuvring vehicles from the hard standings at Nos 104 and 106a and any approaching pedestrians from either direction.
15. Although the appellant submits that the new fencing is permeable, due to its lattice design, it is my view that it prevents a clear unimpeded view of pedestrians when cars are either being reversed or when exiting forward-facing from both hard standings. Similarly, in terms of pedestrians, they are prevented from seeing when a car is about to exit. As such, the development does not accord with Policy DM2 of the DPD, which states that new developments should protect pedestrian routes. However, both the appellant and the Council's highway engineer suggest this situation could be remedied.
16. The appellant is prepared to remove the modified panel of fencing perpendicular to the back edge of the pavement. I find this would be sufficient to improve the visibility for drivers, allowing a clear view of approaching pedestrians and, for pedestrians, that would enable them to see a moving vehicle. This would be the case even with cars reversing off the hard standing.
17. The Council suggest that the fencing should be no higher than 600mm for a distance of 2m from the back edge of the footway but also observe that the height of the brick wall is unknown when making this suggestion. This is most relevant as the brick wall also abuts a brick-built bin store on the hard standing of No 104. It is the same height as the boundary brick wall at No 106a and in terms of its width extends to just over the width of the modified fence panel. I find the Council's suggestion would not entirely provide the desired result as it appears that both the boundary brick wall and the bin store are over 600mm in height near to the back edge of the footway. As such, reducing/removing the fencing would not achieve the Council's requirements as the bin store is outwith the area attacked by the notice.
18. As the Council's view is that the fencing only partly obscures visibility, it is considered that the appellant's suggestion would be the more practical and could be achieved by the imposition of a condition. Such a condition would require the appellant to comply with a strict timetable to ensure the removal of

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<sup>3</sup> Haringey's Local Plan, Strategic Policies 2013-2026, adopted March 2013, Consolidated with alterations since 2017

<sup>4</sup> Haringey London Development Management DPD, adopted July 2017

the particular fence panel. This needs to be in place to enable the development to be safe. With such a condition, I find that the development would accord with Policy DM2.

19. The condition is drafted in a particular form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective granted permission, it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of an outstanding detailed matter. This is because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission for the fencing where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away and all the fencing would have to be removed.

20. The appeal on ground (a) therefore succeeds.

### **Conclusion**

21. For the reasons given above, I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

*D Fleming*

INSPECTOR