
Appeal Decision

Site visit made on 11 August 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2021

Appeal Ref: APP/M5450/C/21/3270005

15 Jellicoe Gardens, Stanmore HA7 3NS

- 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 Ashish Pala against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 21 January 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised construction of a metal boundary fence with trellis and a gate to front and side of the Land ("the Unauthorised Boundary Treatment")
 - The requirements of the notice are
 1. Demolish the Unauthorised Boundary Treatment
 2. Remove from the Land all material and debris arising from compliance with the requirements of the 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) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be decided.
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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.

Procedural Matters

2. The appellant was asked if he wished to pursue a ground (d) immunity argument as he had referred to the development being in place since 2015. However, the letter he originally provided from the company who installed the development refers to an installation date of 4 June 2017 and the Council has provided aerial images which do not show the development in place before 2017. As the appellant has not replied to confirm that he wishes to pursue a ground (d) appeal, the appeal will be considered under the original ground (a) only.
3. A revised National Planning Policy Framework was published on the 20 July 2021 and the parties were given the opportunity to provide specific comments on the changes. The Council replied to say that it did not think that there were new matters to address as a result of those changes and I concur with that view.

Background Matters

4. The appellant has made two planning applications with regard to the development which is the subject of the notice. The first planning application to retain the development was refused on the 5 August 2019. A second planning application proposed removing the white trellis border from the fence and was refused on the 27 February 2020. An appeal was lodged against that refusal,¹ but was turned away as it was submitted out of time.
5. The second application was refused as the material of the fence was considered to be unsuitable and incongruous and the body of the report states "It is suggested that the applicant applies for a timber fence with the proposed height of 1.8 metres."
6. The enforcement notice, the subject of this appeal, was then issued in January 2021. Although the appellant has referred to an earlier enforcement notice being served, the document provided by the appellant is a warning letter rather than a formal notice.

The ground (a) appeal and the deemed planning application (DPA)

Main Issue

7. The main issue is the effect of the development on the character and appearance of the dwelling and surrounding area.

Reasons

8. An appeal under ground (a) is that planning permission should be given for the matters stated in the breach of planning control which consists of the gate and boundary fence as existing. However, the appellant has proposed the same reduction in height as proposed in the second planning application as part of this appeal. A ground (a) appeal does allow consideration of part of the development as well as the whole, I will address both retention of existing development and the proposed reduction.
9. The appeal dwelling is a substantial two storey detached dwelling on Jellicoe Gardens which has a wide open frontage with generous parking. Dwellings on the street are generally set back from the highway with off street parking. Boundary treatments on Jellicoe Gardens are largely a mix of open front gardens with parking, soft landscaping, and limited wooden fencing.
10. The location of the appeal dwelling on a curved corner of the street means that the dwelling has boundaries to the highway at the front and side of the appeal site with the main garden and patio behind those boundaries. The development consists of a boundary fence which extends out from one side of the dwelling along the front boundary and then curves on the corner into a straight length along the side boundary and then finishes with a short length to the rear of the appeal site which also forms a side boundary with the neighbouring dwelling. The development replaced timber panel fencing that the appellant indicates was in a poor state of repair. Although there is a very modest section of low picket fencing to the front corner of the appeal site next to the pavement and partially bordering the path to the gate, it is still the case that the development is the prominent boundary feature.

¹ APP/M5450/D/20/3252973

11. The fence panels are made of dark brown powder coated galvanized metal. A section of cream trellising of approximately 30cm forms a border at the top with a small brown sphere on each panel post. There is also a border along the bottom of the panels in the same galvanized metal. The development varies in height along its length as there are variations in the ground level to the side of the appeal site. The highest section of panels are to the front of the dwelling where a gate is positioned to allow access to the patio area and garden and are around 241cm without the sphere. The appellant refers to ground levels within the appeal site being around 20cm to 40cm higher than the adjoining pavement and measurements taken at the site visit do support differences in height to the fence inside and outside the appeal site. Nevertheless, in assessing the character and appearance of the development, public views of the development from outside the appeal site are clearly relevant.
12. The Council objects to the development on the basis of the materials which it considers would be more commonly be seen in an industrial setting and its height which is in excess of 2 metres. The development does, in my view, have a utilitarian appearance which is incongruous compared to the prevailing pattern of softer boundary treatments and lower wooden fencing in the surrounding area. I therefore do find that the development does harm the character and appearance of the appeal dwelling and surrounding area.
13. In assessing part of the development, namely the development without the cream trellis border, the removal of the border would result in a reduction in height and some visual improvement as compared to what exists. However, the extent and appearance of the galvanized fence particularly along the curved side boundary, would still harm the character and appearance of the dwelling and the surrounding area.

Other Matters

14. The appellant has provided photographs of examples of dwellings on corners with fences around 2 metres which he considers represent the prevailing character of the area and I was able to see the boundary treatments referred to as part of my site visit. Of the examples given, all of the dwellings have traditional timber fencing normally found on residential sites. The examples also have a straight timber side boundary with a very modest section of fencing or a gate projecting from the side of the dwelling.
15. I do not find any of the examples given to be comparable to the appeal site boundary which is made up of one continuous stretch of galvanized fencing which has a different appearance to traditional timber fencing. The appeal site also occupies a unique position on Jellicoe Gardens with the curved side boundary. The presence of the curve adds to the prominence of the development when viewed from the pavement in both directions.
16. The appellant believes that the galvanized fencing is better for security and more stable in winds as the ground level inside the boundary fence is higher than the adjoining pavement which caused the old fence to bow and bend outwards. However, alternative security measures or boundary treatments such as hedging have not been referred to. It is also not clear why traditional timber fencing would not be appropriate with additional support if it is required. A fence higher than 1 metre as previously suggested by the Council may address the appellant's overlooking and security concerns.

17. Adding timber cladding and brickwork to the development were only included in the appellant's final comments. However, based on the limited information before me, I am unable to be satisfied that these later suggestions would overcome the harm that I have identified.
18. It is the case that there is no allegation that the development affects any amenity of neighbours with regard to light or privacy and there is some support from neighbours for the development. Similarly, highway safety has not been raised as an issue by the Council. The development is not however a direct replacement for the previous fence as it is made of different materials and is higher and I do not share the appellant's view that visually there is little difference between a traditional timber fence and the development. The difference is marked in terms of colour, appearance and design and is in contrast to the traditional timber fences that are characteristic of the surrounding area.
19. The appellant has referred to Article 1 of the First Protocol and Article 8 of the European Convention of Human Rights being engaged. However, those rights are qualified and I consider that the terms of the notice are necessary and justified particularly where the appellant can, subject to planning permission, erect an alternative boundary fence. None of the matters raised by the appellant either collectively or individually outweigh the harm that I have found.

Conclusion

20. The development is therefore in conflict with Policy CS1B of the Harrow Core Strategy (2012) which, amongst other things, states that all development must respond positively to the local context in terms of design. It would also be in conflict with Policy DM1 of the Development Management Policies Local Plan (2013), which amongst other things, refers to a high standard of design with particular regard to mass, bulk, scale, and height. It would also be contrary to Paragraph 4.45 of the Supplementary Planning Document- Residential Design Guide (2010) which refers to boundary materials reflecting those prevailing in the area. The notice also refers to Policies 7.4B and 7.6B of the London Plan (2016). Although, those policies are no longer relevant following the adoption of the new London Plan 2021, similar policies are contained in Policies D3.D(1) and D3.D(11) of the new Plan and are consistent with the policy conflicts already identified particularly local context and design.
21. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application under Section 177(5) of the Act as amended.

E. Griffin

INSPECTOR