



Appeal Decision

Site Visit made on 25 June 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2021

Appeal Ref: APP/Q5300/C/21/3272630

All that Land Known As 42 Bullmoor Way, Waltham Cross EN8 8HT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Rachel Ituah against an enforcement notice issued by London Borough of Enfield.
 - The notice was issued on 5 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a front boundary wall, pillars, fence, railings and gates (identified in blue on the plan for identification purposes) in excess of the parameters set out within Part 2, Class A of The Town and Country Planning (General Permitted Development)(England) Order 2015.
 - The requirements of the notice are to:
 - 5.1 Reduce the height of the front boundary wall, pillars, fence, railings and gates (identified blue on attached plan for identification purposes) in order to comply with Part 2, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015.
 - 5.2 Remove all resulting materials from the Premises.
 - The period for compliance with the requirements is: One (1) calendar month after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by the insertion of '*to no more than 1 metre above ground level.*' after the words '*Reduce the height of the front boundary wall, pillars, fence, railings and gates (identified blue on attached plan for identification purposes)*' and the deletion of '*in order to comply with Part 2, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015.*' in section 5.1 of the notice.
2. Subject to the above corrections, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. Since the enforcement notice was issued The London Plan (2021) has been published by the Mayor of London and is now part of the development plan. The policies within the London Plan (2016) are therefore no longer extant. The parties have had the opportunity to comment on the new London Plan during the appeal process.

4. Since the appeal was lodged, the Government published its revised National Planning Policy Framework (July 2021). The parties have had the opportunity to comment on the implications of the changes during the appeal process.

Matters concerning the notice

5. The allegation relates to a front boundary wall, pillars, fence, railings and gates which the notice states are 'identified in blue on the plan for identification purposes'. The requirements also make reference to these structures being identified in blue on the attached plan for identification purposes. The blue line, as shown on the plan, does not extend the full depth of the front garden and so does not include the entire wall, as erected. For the avoidance of doubt, my consideration of this appeal is limited to the matters stated in the breach.
6. The notice requires the height of the front boundary wall, pillars, fence, railings and gates to be reduced in order to comply with Part 2, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015. Part 2, Class A of the Town and Country Planning (General Permitted Development)(England) Order (GPDO) 2015 (as amended) permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Development is not permitted by Class A if the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would exceed 1 metre above ground level.
7. Whilst it is clear from the Council's statement it considers the wall, pillars, fence, railings and gates are adjacent to the highway and should be reduced to 1m high, the notice does not specify the height to which the wall should be reduced. Following my inspection of the site, I consider that the structures which have been erected are, as a matter of fact and degree, adjacent to a highway used by vehicular traffic. In the interests of clarity, the notice should be corrected to specify the height to which the wall, pillars, fence, railings and gates should be reduced to. Given the above, and since this would be in line with the measurements specified in the relevant Part and Class of the GPDO, I consider that the correction can be made without injustice to either party.

Ground (d)

8. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. S171B of the Act sets out that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Case law has established that it is for the appellant to make their case on the balance of probabilities.
9. The main thrust of the appellant's case is that the front garden had high fences for more than 4 years before they were replaced. The appellant has provided a series of undated photographs, which appear to show a mix of fencing types bounding the site, including a close boarded fence between the appeal site and the adjacent property.

10. The boundary treatments which form part of the breach have been constructed of a concrete wall and pillars, painted white with metal gates painted black, are clearly different to the boundary treatments shown in the photographs. Significantly, Google Street View photographs provided by the Council show that the property was bound by a low level brick wall and vegetation in April 2018. Furthermore, from the appellant's own evidence, it is clear that they have been replaced.
11. Since the notice was issued on 5 March 2021, I conclude, on the balance of probability, that at the time the notice was served, the wall, pillars, railings and gates had not been substantially complete for a period of four years and the appeal made under ground (d) therefore fails.

Ground (a)

12. An appeal under ground (a) is made on the basis that, in respect of the breach of planning control, planning permission ought to be granted.

Main Issues

13. The main issue of the appeal are the effect of the appeal scheme on:
- the character and appearance of the area; and
 - the living conditions of the occupants of Nos 40 and 44 Bullsmoor Way; and
 - Highway safety.

Reasons

Character and appearance

14. The appeal site comprises a terraced dwelling in a residential area which is generally characterised by bay fronted dwellings with modest front gardens bound by a mixture of low level walls or fences. The low level boundary treatments to the front of dwellings provide a sense of spaciousness and make a positive contribution to the character and appearance of the area. Whilst I saw that there are fences and brick walls of around 2m in height in the area, these are generally found on return boundaries or where a rear boundary to a property is adjacent to a highway.
15. White painted walls have been erected to the front of the dwelling, with black painted metal panels above, railings and black painted metal double gates. The enclosure extends up to around 2.1m in height. The height of the enclosure and the use of white render and painted black metal contrasts significantly with other boundary treatments and creates a sense of enclosure which is uncharacteristic of properties along this part of Bullsmoor Way. Given the proximity of the appeal scheme to the footway, it appears a dominant and incongruous feature that diminishes the character and appearance of the area.
16. Although the properties opposite the appeal site do not have low level walls and fences, they form return boundaries and rear boundaries to dwellings which face towards Bullsmoor Ride or Bullsmoor Close. Such boundary treatments do not therefore characterise the frontages of dwellings along the appeal side of Bullsmoor Way.

17. The appellant has submitted drawings which propose to reduce the height of the metal gates to 2 metres. However, such a limited reduction in height would do little to mitigate the effect of the gates on the character and appearance of the area. Whilst previous fences, trees and hedges may have not drawn any complaint from neighbours or the Council, since they have now been removed, I cannot afford this matter weight.
18. For the reasons given above, the wall, with associated pillars and metal fencing and gates diminish the character and appearance of the area, contrary to Policy D3 of the London Plan (2021) which seeks development which delivers high quality design and is of a scale and form which is appropriate to the existing setting and character, policy CP30 of the Enfield Core Strategy (ECS)(2010) which seeks high quality development that has regard to its context, and policy DMD8 (j) of the Enfield Development Management Document (EDMD)(2014) which seeks to ensure that boundary treatments do not dominate or cause harm to the character or appearance of the street and DMD37 of the EDMD which seeks high quality development which has regard to its surroundings.

Living conditions

19. The appeal dwelling forms part of a terrace of similarly designed bay-fronted dwellings which front onto Bullsmoor Way. In respect of No 40, the wall is directly adjacent to a porch rather than a habitable window. Although there is a bay window on the front elevation, due to its distance from the wall, I consider it highly unlikely that there is a significantly harmful effect on outlook for occupants of the dwelling.
20. The wall is separated from the bay window of No 44 by a substantial hedge. Given the extent of the window and the intervening hedge, the outlook from No 44 is not harmfully affected by the wall. Given the above, there is no harm to the living conditions of Nos 40 or 44 and no conflict with Policy D3 of the London Plan, which seeks development which delivers appropriate outlook and amenity, amongst other things.

Highway safety

21. Although the gates are substantial, I have no evidence that the front garden would be used for the parking of vehicles. There is no vehicle crossover to the pavement and permission would therefore be required from the highway authority to install one to enable vehicular access to the front of the property. Were the appellant to apply for a crossover, it would be open to the Council to consider the effect of the proposal on highway safety. The gates open inwards onto the appeal site and so would not cause obstruction to pedestrians using the adjacent footpath.
22. Thus, for the reasons given above there would be no harm to highway safety arising from the appeal scheme and no conflict with policy T4 of the London Plan, which seeks to ensure that development proposals do not increase road danger, policy CP25 of the ECS which seeks safe, convenient and accessible routes for pedestrians, cyclists and other non-motorised modes and policy DMD 47 of the EDMD which seeks safe non-vehicular and vehicular access.
23. The appellant suggests that the appeal scheme provides a secure area where bicycles can be stored in the front garden, encouraging occupiers of the property to reduce reliance on vehicular traffic. Whilst encouraging cycling

would be of benefit, I am not persuaded that the appeal scheme is the only means of securing secure storage and so I afford such benefit very limited weight in this instance.

24. The appellant suggests that the previous boundary fence and trees were detrimental to policy 6.9 and 6.10 of the London Plan (2016) which sought development which contributes positively to an integrated cycling network and high quality pedestrian environments respectively. Policy T4 of the London Plan similarly seeks to encourage walking and cycling. However, I have no substantive evidence that the boundary treatments posed a danger to pedestrians and cyclists. Furthermore, they have been removed and so do not constitute a realistic fallback position. I cannot therefore afford this matter weight.

Other Matters

25. The Council referred to Policy DMD 48 of the EDMD, which sets out the circumstances in which transport assessments will be required. As set out above, the appeal scheme would not place pressure on the existing transport network and so the policy is not relevant in this instance.
26. The appellant has raised concerns regarding a lack of engagement with the Council's Planning Enforcement Team. However, such matters have not had a bearing on my decision, which is based upon the planning merits of the appeal scheme.

Conclusion

27. Although I have found that the appeal scheme does not harm the living conditions of neighbouring occupants or highway safety, I have found that it harms the character and appearance of the area. Such harm outweighs any benefit arising from the provision of secure storage for cycling.
28. Thus, for the reasons given above, I conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

M Savage

INSPECTOR