



Appeal Decision

Site visit made on 12 October 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2021

Appeal Ref: APP/A5840/C/21/3276468
45 Ruskin Walk, London SE24 9NA

- 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 Fabrice Ntchouissi against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice was issued on 22 April 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a fence along the north western boundary to the rear of the Property which when combined with the dwarf wall exceeds the height permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and which is shown in the approximate position marked in blue on the attached plan ("the Unauthorised Development").
 - The requirements of the notice are:
 - 5.1 Reduce the height of the fence along the north western boundary to the rear of the Property and which is shown in the approximate position marked in blue on the attached plan to a height of no more than 2 metres from natural ground level; and
 - 5.2 Remove from the Property any material and debris resulting from the works in requirement 5.1.
 - 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 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 deleting the allegation within section 3 of the enforcement notice (the matters which appear to constitute the breach of planning control) and its replacement with "the construction of a fence along the north western boundary to the rear of the Property which is shown in the approximate position marked in blue on the attached plan".
2. Subject to the correction, 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 construction of a fence along the north western boundary to the rear of the Property which is shown in the approximate position marked in blue on the attached plan at 45 Ruskin Walk, London SE24 9NA referred to in the notice.

Procedural Matters

3. The allegation in the Enforcement Notice is worded in a complicated manner. This makes it difficult to follow and determine what the act or acts of development subject to the allegation are, or the terms of the deemed planning application and appeal on ground (a). However, the appellant appears to have understood the allegation and, in my opinion, the misdescription does not render the notice unclear. It is necessary however to correct the allegation to remove unnecessary words but retaining the effect of what the Council is trying to achieve. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to achieve this correction.
4. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). I have invited the main parties to comment on the Framework and have taken account of any responses from them in my determination of the appeal.

Main Issues

5. The main issues are the effect of the development on the living conditions for the occupiers of 43 Ruskin Walk, with particular regard to light, overshadowing and outlook.

Reasons

Living conditions for the occupiers of 43 Ruskin Walk – light, overshadowing and outlook

6. The guidance contained within the Residential Design Standards SPD, 2011 and 2015 technical update states that in general, rear garden walls and fences should not exceed 2 metres to protect views and daylight. I appreciate that the Design SPD is in the form of guidance and is not therefore a hard and fast rule. However, it provides a useful indication of what may be acceptable in accordance with design codes that the Council can use as set out in chapter 12 of the Framework.
7. The close boarded fence, above the dwarf wall, extends the full length of the rear garden along the boundary with No 43. However, I observed during my site visit that the land levels between Nos 43 and 45 are not the same. In particular, the land level at No 43 is noticeably higher than that of No 45 for a large section of the gardens, which reduces the impact of the fence on the neighbouring occupiers of No 43. Owing to the difference in land levels, I am satisfied that the fence does not result in any harmful overshadowing or loss of light or outlook to neighbouring occupiers of No 43.
8. I therefore conclude that the development has an acceptable effect upon the living conditions for the occupiers of 43 Ruskin Walk, with particular regard to light, overshadowing and outlook. Accordingly, the development complies with saved policy 3.2 of the Southwark Plan (2007) and strategic policy 13 of the Southwark Council Core Strategy (2011). Amongst other things, these state that planning permission for development will not be granted where it would cause loss of amenity..... to present and future occupiers in the surrounding area, and that development should avoid amenity and environmental problems.

9. Furthermore, the development complies with paragraph 130 of the Framework which seeks to ensure all developments promote health and well-being, with a high standard of amenity for existing and future users.

Other Matters

10. The Council have referred to emerging policies 12 and 54 in the draft New Southwark Plan. However, as these policies have yet to be adopted, and there is no evidence before me which allows me to make any judgement regarding the extent of unresolved objections, I cannot give them full weight at this time save to acknowledge that they appear not to significantly alter the policies referred to in the extant Local Plan mentioned above.
11. No conditions have been suggested by the Council and as the development appears to be completed, there is no need for any.

Conclusion

12. For the reasons given above I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development described in the enforcement notice as corrected.

R. Satheesan

INSPECTOR