



Appeal Decision

Site visit made on 31 January 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2022

Appeal Ref: APP/N5090/C/20/3261838

1 Sunset View, Barnet EN5 4LB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ahmet Eren against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice, numbered ENF/0962/20, was issued on 9 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of walls, railings and gates to the front of the property as shown edged red in the attached photograph
 - The requirements of the notice are to: demolish the walls, railings, gates and all associated posts and fittings and remove all constituent elements from the site.
 - The period for compliance with the requirements is: 2 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) 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 varied by the deletion of '2' at section 6 of the notice and the insertion of 6, so that it says '6 Months after this notice takes effect.'
2. Subject to the variation above, 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.

Ground (d)

3. 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. The appellant ticked ground (d) on the appeal form.
4. In order to succeed on ground (d), the appellant would need to show, on the balance of probabilities, that the operations were substantially completed on or before 9 September 2016. In the appellant's statement, it is confirmed that the enforcement notice was issued, the construction works were still in progress. The appellant's statement does not expand upon why the appellant considers an appeal under ground (d) should succeed.
5. Thus, it has not been demonstrated, on the balance of probabilities, that the operations were substantially completed on or before 9 September 2016. The appeal under ground (d) therefore fails.

Ground (a)

Main Issue

6. The main issue is the effect of the appeal scheme on the character or appearance of the Monken Hadley Conservation Area (MHCA).

Reasons

7. The appeal building is located in a prominent location on the corner of Sunset View and St Albans Road, within an area which is characterised by substantial dwellings set in generous plots generally bound with low level brick walls and vegetation to the frontage, which gives the area a verdant character. The Monken Hadley Conservation Area Appraisal (2007) advises that Monken Hadley is still very green and leafy in character.
8. In my view, the significance of the MHCA is derived from the layout of buildings, fine architectural detailing, use of traditional materials and its green and leafy character. The use of low level boundary treatments and vegetation to frontages makes a significant contribution towards its character and appearance. I have been provided with photographs of the boundary treatments which were *in situ* prior to the appeal scheme being constructed. The site was bound to the front by a low level brick wall and vegetation, which would have been characteristic of the area and made a positive contribution to the character and appearance of the MHCA.
9. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the MHCA. Furthermore, paragraph 199 of the National Planning Policy Framework ('the Framework')(2021) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
10. The walls which have been constructed are in a brick which contrasts in colour to the brick of the main building. The black railings are an incongruous feature, which fail to complement the Arts and Crafts design of the main dwelling. Although the main building can still be viewed from the public domain, the walls and railings also present an enclosed frontage, which is uncharacteristic of the area.
11. The appellant has drawn my attention to a number of properties along Sunset View which have boundary treatments which are asserted to be of a similar height to the appeal scheme. However, I do not have full details of the examples cited and cannot be sure of the circumstances around their construction. Furthermore, the properties are not in such a prominent position. While No 2 is bound by a close boarded fence, due to the use of materials and the orientation of the building, it is a less prominent feature and does not inform the character of the area.
12. The appellant has also drawn my attention to planning permissions, which were granted at No 57 Brampton Grove and Tillingbourne Gardens, for front boundary brick walls with railings. While I recognise the similarity in terms of the design of the boundary treatments, I do not consider the design of the dwellings, or their locations to be comparable to the appeal site. Furthermore,

the dwellings cited are not in the MHCA. They do not therefore weigh in support of the appeal scheme.

13. Given the prominent location of the dwelling, the works are harmful to the character and appearance of the area and fails to conserve or enhance the character or appearance of the MHCA, contrary to policy CS5 of the London Borough of Barnet Core Strategy DPD (2012) which seeks to protect and enhance conservation areas and policies DM01 and DM06 of the London Borough of Barnet Local Plan (Development Management Policies) DPD (2012), which seek to preserve or enhance local character. It is also contrary to the Residential Design Guidance (RDG)(2016), which advises that boundary materials should reflect those prevailing in the area and walls, fences and hedges defining the front of properties should be kept low.
14. Paragraph 189 of the Framework states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance. Paragraph 202 goes on to advise that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use. I consider that the harm arising to the significance of the designated heritage asset would be less than substantial in the context of paragraph 202 of the Framework.
15. While the front boundary wall required upgrading due to defects and aging, this is not justification for the appeal scheme, since it would have been possible to simply replace the failing brickwork. The appellant states that there have been several attempts of burglary to the property. They wish to provide a private, safe and secure place for anyone using the garden and to secure their dog, which is intended to live outside and guard the boundaries. However, I am not persuaded that the appeal scheme is the only means of securing the site, nor is it the only way of ensuring the appellant's dog is secured. I therefore afford this matter very limited weight.
16. The appellant has drawn my attention to Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO) which 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. The appellant accepts that the pillars measure 1.5 metres in height.
17. Furthermore, the Council has provided a map of the Monken Hadley Conservation Area, which shows the appeal site is within an area which is subject to an Article 4 Direction. The officer report also confirms that the site is within an area where there is an Article 4 Direction. A copy of the Article 4 Direction has been provided by an interested party, which includes Class A of Part 2 of Schedule 2, where the gate, fence, wall or other means of enclosure would be within the curtilage of a dwellinghouse and would front a relevant location.
18. Although the Council ticked 'no' on the questionnaire in response to the question 'Is the appeal site subject to an Article 4 Direction' this therefore

appears to be an error. Planning permission would therefore be required for the erection of a gate, fence, wall or other means of enclosure.

19. The benefits of the appeal scheme are outweighed by the harm I have identified to the MHCA, the conservation of which I attribute great weight to.

Other Matters

20. While the appeal scheme does not impact on the amenities of neighbouring occupiers, this is a neutral factor in my consideration of the appeal.

Ground (a) conclusion

21. Therefore, for all of the reasons given above I conclude that the appeal under ground (a) should be dismissed.

Ground (f)

22. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken... exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. Given the requirements of the notice, it is clear that the purpose of the notice is to remedy the breach of planning control.
23. The appellant asserts that there was already an existing boundary front wall and has provided pictures of the previous wall *in situ*. However, from the evidence, it appears that this has been replaced in its entirety. The boundary wall which was *in situ* prior to the construction of the appeal scheme was a low level brick wall, which was in keeping with the materials used in construction of the dwelling and other boundary treatments in the locality.
24. The appellant has raised concern about the financial difficulties they would face in complying with the requirements. The enforcement procedure is intended to be remedial rather than punitive. However, since the appeal site is within an area which is subject to an Article 4 Direction, it does not benefit from permitted development rights under Class A of Part 2 of Schedule 2 of the GPDO. Whilst I recognise the financial difficulties many have faced as a consequence of the Covid-19 pandemic, I can see no obvious alternative which would overcome the planning difficulties at less cost and disruption than total removal.
25. Thus, the requirements are not excessive and the appeal under ground (f) fails.

Ground (g)

26. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant states that the compliance period is too short in light of the Covid-19 pandemic and suggests a period of 6 months.
27. Since the appeal was lodged, the situation around the pandemic has fluctuated and restrictions have been changed. I see no reason why the pandemic would impact on the appellant's ability to comply with the requirements of the notice.
28. Nevertheless, the appellant is likely to wish to reinstate some sort of boundary treatment, which is likely to require planning permission, which will take time

to secure. Consequently, I consider 6 months is a more reasonable compliance period and shall vary the notice accordingly.

Conclusion

29. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

M Savage

INSPECTOR