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## Appeal Decision

Site visit made on 6 April 2022

**by L Perkins BSc (Hons) DipTP MRTPI**

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

**Decision date: 21 April 2022**

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**Appeal Ref: APP/Q5300/C/21/3270083**

**3 Helena Close, Enfield North, Barnet EN4 0JA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Costas Polycarpou against an enforcement notice issued by the Council of the London Borough of Enfield.
- The notice was issued on 5 February 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a front boundary wall 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 set out in paragraph 5 of the notice are:
  1. Reduce the height of the front boundary wall and gates (identified in blue on attached plan for identification purposes) to a maximum height of 1 metre from ground level in order to comply with Part 2 Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015.
  2. Remove all resulting materials from the Premises.
- The period for compliance with the requirements is: One (1) calendar month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

**Summary Decision:** The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

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### Reasons

1. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice.
2. As is set out in paragraph 3 of the notice, the development before me in this appeal is the front boundary wall and gates in the position identified in blue on the plan attached to the notice, ie the wall and gates which abut the Helena Close footway.
3. Notwithstanding any comments made in the documents provided, the development before me in this appeal does not therefore include anything else, such as the side boundary treatment abutting No 4 Helena Close. I have dealt with the appeal on this basis.
4. The main issue in the ground (a) appeal is the effect of the appeal development on the character and appearance of the area.

5. Helena Close is characterised by large, detached houses set back from the road, providing space for planting and/or off-street car parking to the front of each house. With the exception of a dwarf wall seen at No 9, the front garden area of each property flows right to the edge of the pavement with no physical barrier. This gives the close an open character and appearance which is consistent with the Enfield Characterisation Study, February 2011, that my attention has been drawn to.
6. The appeal development departs from the above arrangement. It provides a physical barrier at the front boundary of the property. However, in my judgement, the combination of its modest width piers, the open nature of its gates, and the restrained height of the overall arrangement, means that the open character of the close is maintained by the appeal development. There are still clear views of the house and front garden area of the appeal property from the public highway, even when the gates are closed. So I do not consider the appeal development has a visually enclosing effect, that might otherwise occur with a boundary treatment of a different design, nor do I consider that it is a dominant boundary treatment.
7. I have had regard to what the evidence indicates would be permitted under The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) as a 'fallback' position for the appellant in this case. The Council tacitly acknowledges this fallback position exists by having not chosen to require that the appeal development be removed. Instead, as is entirely permissible under section 173 of the 1990 Act, it has chosen to 'underenforce' by seeking a reduction in height, to reflect what it indicates would otherwise have been permitted under Part 2, Class A of the GPDO.
8. In this case, I am not satisfied the reduction in height sought would have any significant or appreciable difference on the effect of the appeal development on the character and appearance of the area. So in my view, little purpose would be served by the requirements of the notice in this case.
9. Representations received describe the appeal development as being like prison bars. Even taking into account the change in levels between Nos 3, 4 and 5, I am not satisfied this is the case, having viewed the appeal development from the public highway as well as from the front drives of Nos 4 and 5, and in particular from outside the closest ground floor windows of No 4.
10. No conditions have been suggested by the Council, nor are there any that I consider are necessary, based on the information provided.
11. I conclude on ground (a) that the appeal development does not harm the character or appearance of the area. Therefore, in this regard, I find no conflict with Policy CP 30 of the Core Strategy, adopted November 2010, or Policies DMD 8 and DMD 37 of the Development Management Document, adopted November 2014.
12. Representations received indicate that the appellant was surely aware when he erected the appeal development that it was over the permitted development height. But even if this were the case, it makes no difference as the law allows for planning permission to be granted for development that is being enforced against<sup>1</sup> and the enforcement process is remedial rather than punitive.

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<sup>1</sup> Sections 174 and 177 of the 1990 Act

13. My attention has been drawn to what is referred to as a highways infringement, whereby it is indicated that the appellant drives over the raised pavement to enter his property. It is also said that the gates have encouraged vehicles to park on the pavement. But these are matters controlled under other legislation and so in my view are not good enough reasons to dismiss this appeal.
14. An interested party has indicated that the enforcement investigation was conducted in an unprofessional manner and that this case is subject to an on-going investigation by the Ombudsman. Be this as it may, the way in which the Council has handled the case is not a matter for me to consider in the context of an appeal under section 174 of the 1990 Act.

### **Conclusion**

15. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The appeal on ground (g) does not therefore fall to be considered.

### **Formal Decision**

16. 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 front boundary wall 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, at 3 Helena Close, Enfield North, Barnet EN4 0JA, as shown on the plan attached to the notice.

*L Perkins*

INSPECTOR