



Appeal Decisions

Site visit made on 27 April 2022

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 17th June 2022

Appeal A Ref: APP/P4605/C/21/3288248

Appeal B Ref: APP/P4605/C/21/3288249

183 Russell Road, Birmingham, B13 8RR

- Appeals A and B are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mohammed Reza Saboor and Appeal B is made by Zahra Saboor against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 3 November 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised development of the boundary wall, piers and railings, the unauthorised installation of a front ground floor bay window; a front first floor bay window; a front first floor gable window and a front first floor window above the porch, and unauthorised development of a paved front garden on the Premises in the approximate positions marked in green on the attached plan.
- The requirements of the notice are to :
 - (a) Remove all of the front windows and replace with those approved pursuant to planning permission 2019/04047/PA
 - (b) Demolish the boundary wall including piers and railings the gate and restore the boundary treatment to the condition before the breach took place
 - (c) Remove the paving from the front garden and restore the front garden to the condition before the breach took place
 - (d) Remove all demolished building materials and rubble from the Premises arising from compliance with requirements (a) to (c) above
- The period for compliance with the requirements is 2 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended (the Act). 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. Appeal B is proceeding on grounds (c) and (g) only.

Decisions

Appeals A and B

1. It is directed that the notice is varied by
 - (1) deleting the words " the gate" from requirement (b) which is set out in Paragraph 5 of the notice
 - (2) deleting requirement (a) set out in Paragraph 5 of the notice in full and replacing it with "Remove the front ground floor bay window; the front first floor bay window; the front first floor gable window and the front first floor window above the porch"
 - (3) deleting the words " 2 months" from the period for compliance set out in Paragraph 6 of the notice and replacing them with "5 months."

2. Subject to these variations, the appeals are 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 Act as amended.

Procedural Matter

3. The appellants original appeal form referred to the appeals being made under grounds (a) (f) and (g). However, following a change of agent, that appeal form was superseded by a later appeal form with different appeal grounds. The appellants' current agent has confirmed that the appeals are proceeding on grounds (a) (c) and (g) for Appeal A and (c) and (g) for Appeal B and I have determined the appeals on that basis.

The notice

4. It is my duty to put the notice in order and the allegation should match the requirements. There is a reference in requirement (b) to "the gate" which the Council has confirmed is an error and I will therefore delete the words " the gate" from requirement (b).
5. The allegation identifies each of the windows that are included in the notice which are the three windows at first floor level and the ground floor bay window. However, the corresponding requirement refers to all front windows. The requirement should match the allegation and repeat the details of the specific windows in the interests of clarity particularly when there is a porch with windows that is not included in the allegation.
6. The second part of requirement (a) states "replace with those approved pursuant to planning permission 2019/040447/PA." Planning permission was granted on 4 October 2019 for "Erection of two and single storey rear extensions to include roof alterations, installation of rear dormer window and porch canopy to the front subject to conditions." However, the description of that planning permission and the approved plans make no reference to front windows. The Council has subsequently indicated that a discharge of condition 2 attached to that permission provided for "white timber leaded light windows to visually match existing." However, it is not clear how that materials condition extended to the front windows which were not part of the planning permission.
7. In the circumstances, simply requiring the removal of the front windows would match the allegation and it is then a matter for the parties to resolve the issue of replacement windows. I will therefore delete the wording relating to replacement so that requirement (a) is "Remove the front ground floor bay window; the front first floor bay window; the front first floor gable window and the front first floor window above the porch." Neither party is caused injustice by that deletion when the current wording is inaccurate and the status of the existing planning permission remains unaltered.

The appeal under ground (c)

8. In this ground of appeal, the onus is on the appellants to make out the case that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The appellants have indicated under this ground that much of the existing works lie within permitted development rights and could not be enforced against.

9. Permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) and there are for example permitted development rights that apply to boundary walls subject to meeting the relevant criteria. However, permitted development rights cannot apply retrospectively. Once permitted development tolerances are exceeded all of the boundary wall falls outside permitted development rights. It is therefore not the case as alleged by the appellants under this ground that part of the boundary wall has the benefit of permitted development rights. The notice would need to be complied with in full before any permitted development rights that do apply to the appeal property can be relied upon by the appellants.
10. The appellants do not dispute that planning permission is required under this ground. However, there is no express planning permission for the boundary treatment and there is no evidence before me that permitted development rights apply to the boundary treatment as constructed. The appellant has not provided any details of how permitted development rights apply to the other elements of the development other than to part of the wall which I have addressed. In the absence of express planning permission or permitted development rights for the development, a breach of planning control has taken place. The appeal under ground (c) therefore fails.

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

Main Issue

11. The main issue is whether the development preserves or enhances the character or appearance of the Moseley Conservation Area (the CA).

Reasons

12. The Moseley Conservation Area Character Appraisal and Management Plan states that residential properties within the conservation area are historically defined by low level sandstone, limestone or rubble walls with native hedging behind. Whilst there are some differences in boundary treatments along Russell Road, a large number of dwellings including the dwellings either side of the appeal dwelling still retain these features of low level stone walls with hedging behind. Traditional leaded windows are also an architectural feature that is prevalent in properties along Russell Road. These features do in my view contribute to the significance of the CA.
13. The appellant considers that the CA is not uniformly special and that the development has to be considered against general planning and design policies rather than conservation area policies and legislation. However, all Conservation Areas are designated heritage assets as defined by the National Planning Policy Framework (the Framework) and great weight is to be given to their preservation and conservation. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 also requires that special attention be given to the desirability of preserving or enhancing the character or appearance of a conservation area.
14. The appeal dwelling is a substantial detached property set back from the road with a hipped roof, two storey bay windows and a two storey projecting gable to the front. The Council indicates that prior to the development taking place, the appeal dwelling did display the characteristic frontage found in the CA of

low level walls to the front with hedging and a grassed area as well as a parking area to the front. A photograph provided by a third party objector shows a lower wall with no insets to the front, hedging to the side boundary with the public path and a very modest wall to the side boundary in front of the boundary side hedge of No 181. Dwellings in the vicinity of the appeal dwelling including No 181 and 185 still retain these characteristic features of open frontages with low level stone walls with a mix of soft landscaping and some paving behind the walls.

15. The development consists of three different elements namely replacement front windows, a new boundary treatment to the front and sides of the appeal dwelling and hardstanding to the front.

Windows

16. The windows to the front of the dwelling included in the notice are three windows at first floor level and the ground floor bay window. Prior to the development taking place, the appeal dwelling had leaded windows with white frames and those windows have been removed and replaced with aluminium windows without leading and with dark brown frames. The prevalent style of windows along Russell Road is of leaded windows with white timber frames. The dark colour and use of non-traditional materials for replacement windows does not respect the architectural style of the surrounding dwellings where leaded windows are prevalent.

The boundary treatment and hardstanding

17. The boundary treatment to both sides of the appeal dwelling consists of a red brick wall with a black trim border with piers and timber fencing insets. The timber insets are higher than the piers. To the front of the appeal dwelling, the brick wall element continues along the front but with a gap wide enough for vehicular access. The piers to the front have cream coloured tops and the insets consist of railings rather than timber. The height, design and materials of both the side and front boundary treatments are imposing and dominant features in the street scene which are not in keeping in an area where boundary treatments are largely low stone walls which in most cases are viewed in combination with soft landscaping in the form of hedges, mature trees or shrubs. The presence of a public path between the appeal dwelling and No 185 does mean that side boundary particularly where the curved insets are higher than the brick wall is visually dominant for path users.
18. The whole of the substantial frontage to the appeal dwelling is now made up of one area of grey hardstanding with no soft landscaping. This is in stark contrast to the verdant appearance of nearby dwellings which largely retain mature hedging and trees and areas of grass on the frontage and have partial hardstanding for vehicles. Although, the appellants suggest that revised landscaping proposals will enhance the appearance of the frontage, no details are provided. I am not persuaded in the absence of any details and given the extent of the hardstanding that a condition can provide suitable mitigation to overcome the visual harm arising from the hardstanding particularly against a background of dark framed windows.
19. The appellants have referred to their particular need for a secure front with no easy access to the road due to the nature of their local business. There is no explanation as to why the need for security arrangements at the appeal

dwelling in connection with their local business could not be resolved by providing security for the business elsewhere. The presence of existing CCTV cameras with associated warning signage does provide a level of security that is commonly found at domestic premises. It is not clear how the boundary treatment provides a higher level of security for parked vehicles when cars on the frontage are visible from the road through the railings.

20. The appellant states that the works to the drive were necessary to achieve "access at a grade with the public highway" for the planning permission works. However there is no evidence before me as to why carrying out the planning permission works which relates largely to the back of the dwelling impacts upon the frontage or why any pre-existing issue required the whole of the frontage to be covered in hardstanding.
21. Whilst the appellant states that the front area achieves the proper collection and disposal of surface water drainage, that is not the view shared by a third party but in any event, the issue before me relates to the appearance of the development within the CA rather than any concerns about its function.
22. The combination of the elements of the development namely the windows, the hardstanding and the boundary treatment are incongruous features which are out of place in an area where boundary treatments and windows are of more traditional design and frontages generally have areas of hardstanding with soft landscaping. I do find that the development does not preserve or enhance the character or appearance of the Conservation Area as required by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The harm caused to the significance of the Conservation Area is less than substantial. Although paragraph 202 of the Framework states that the harm that I have identified should be weighed against any public benefits of the development, the appellant has not referred specifically to any public benefits.
23. The appellant indicates that there are other examples along Russell Road where similar brick walls with brick pillars plus railings have been constructed and approved. However, no details are provided by the appellant of which particular dwellings he is referring to. From my site visit, I observed that whilst there are different styles of properties along the length of the road, the feature low stone walls with soft landscaping behind the walls are still a prevalent feature. The properties with which the appeal dwelling is most visually associated are the dwellings to either side and they are similar to the appeal dwelling in terms of design with front gables and both retain these characteristic features. Whilst there are some examples of railings in the wider surrounding area, these are not directly comparable in terms of location siting and design to the appeal boundary treatment. In addition, I do not know the circumstances of those sites and, in any event, each case must be considered on its own merits. The existence of some examples of railings or pillars does not justify further alterations which will be detrimental to the CA as a whole.
24. For the reasons above, the development fails to preserve or enhance the character or appearance of the Conservation Area. The development is therefore contrary to Policy TP12 of the Birmingham Development Plan 2017 which states that the District's historic environment should be protected and enhanced. It would also be contrary to Policy PG3 of the Birmingham Development Plan 2017 which, amongst other things, states that

development should reinforce local distinctiveness. The ground (a) appeal therefore fails.

An appeal under ground (g)

25. An appeal under ground (g) is that the period for compliance is too short. The current compliance is 2 months and the appellants state that "remove and reinstate" is contrary to the planning permission. No details are provided as to how the requirements are in conflict with the planning permission which apart from the front porch relates to the rear of the dwelling. The appellants have asked for 2 years to submit a new planning application and to construct which in the absence of further details is excessive and the equivalent of a temporary planning permission. The requirements of the notice include removal of the hardstanding and the boundary treatment and to restore the front garden and the boundary treatment which does not require a new planning application.
26. With regard to the windows, the Council has already indicated that white timber ledged light windows are appropriate. However, I accept that the appellants and the Council need to consider the scope of the materials condition or alternatively whether a like for like replacement of the original ledged windows requires a planning application. In the circumstances, I consider 5 months to be an appropriate balance to allow for discussions and to carry out all of the work required to achieve compliance with the notice.

Conclusion

27. For the reasons given above, the appeals are 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 Act as amended.

E Griffin

INSPECTOR