



Appeal Decision

Site visit made on 27 June 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 August 2022

Appeal Ref: APP/N5090/C/21/3272628

78 Western Way, Barnet EN5 2BT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Miss Grace Beharry against an enforcement notice issued by London Borough of Barnet.
- The notice, numbered ENF/1593/19, was issued on 25 February 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of boundary fencing to the side and rear boundaries of the rear garden.
- The requirements of the notice are to:
 - 1 Either
 - a) Reduce the rear and side boundary fencing to no higher than 2 metres from ground level;
 - Or
 - b) Dismantle and remove the rear and side boundary fencing.
 - 2 Remove all constituent materials from the works listed in 1. above from the property.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the ground 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.

Summary of 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.

Formal Decision

1. 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 boundary fencing to the side and rear boundaries of the rear garden at 78 Western Way, Barnet EN5 2BT as shown on the plan attached to the notice.

Preliminary Matters

2. Although the appeal was initially submitted under grounds (a) – (f) inclusive, the appellant subsequently confirmed that the appeal should proceed on ground (a) only¹. Despite this, the appellant's statement goes on to allege that the Council did not follow its own guidelines and protocol regarding investigations in relation to how it carried out its enforcement proceedings. As a consequence of the Council's failure to follow correct protocols and procedures, the service of the Notice was, the appellant argues, defective².

¹ Ground (a): that planning permission should be granted for what is alleged in the enforcement notice

² Ground (e): that the enforcement notice was not properly served on everyone with an interest in the land

3. The provisions of section 172(2) of the 1990 Act provide that a copy of the Notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land; that interest being one which, in the opinion of the Council is materially affected, whilst section 329 sets out the modes of service of a Notice.
4. The appellant has not submitted any further evidence to demonstrate that the notice was not properly served on everyone with an interest in the land or to lead me to conclude that the Council have not otherwise satisfied the provisions of section 172(2) of the 1990 Act. Rather, it seems to me that the appellant's argument relates instead to whether or not the Council followed its own protocols and procedures in relation to enforcement investigations, not to any failings in relation to the actual service of the Notice when considered against the relevant section of the 1990 Act. In any event this is not a matter for my consideration.
5. It is clear however that the appellant's intention, once clarified, was that the appeal should proceed solely on ground (a). I am satisfied from the evidence before me that the Notice was appropriately served and this 'hidden' ground of appeal under ground (e) therefore fails.

The appeal on Ground (a)

Main Issues

6. The main issues arising from the Council's reasons for issuing the notice are the effects of the development as built on:
 - The character and appearance of the host property and the wider area; and
 - The living conditions of occupiers of the adjoining residential property.

Reasons

Character and appearance

7. The appeal property is one of a number of residential properties along Western Way and Grasvenor Avenue that back on to an expansive open area which includes the Barnet Playing Fields and the Dollis Valley Green Walk park. The rear garden enclosures of the properties that back on to the open space vary considerably in their nature, appearance and height along the length of the perimeter of these areas; from predominantly hedged boundaries of those properties which front Grasvenor Avenue to a more varied mix of hedges, fences and walls, together with garden outbuildings, of properties which front Western Way and back on to the park.
8. The part of the fence at the rear of the appeal property adjacent to the Dollis Valley Green Walk park is seen in longer views from the park. The fence at the appeal property, which is comprised of fence panels with trellis panels above, is noticeably greater in height than those at nearby properties. Neither was it, at the time of my visit to the site, particularly softened by climbing or trailing vegetation nor particularly muted in terms of their colour finish.
9. However, it is seen under the canopy and branches of two large trees positioned close to and to either side of the rear of No. 78. Whilst the fence panels and trellis appear somewhat stark when viewed close up and when compared with the more muted colours and vegetation covered walls and

fences nearby, in longer views its height is less noticeable. Moreover, the stark appearance seems to me to be due more to the less-weathered nature of the timber fencing panels rather than the outright height of the fence and trellis.

10. The overall height of the fence and trellis is clearly greater than that of many other fences and walls backing on to this part of the Dollis Valley Green Walk park. There are garden outbuildings on, or close to, rear garden boundaries with the park which are of similar height, but do not share the extended length of the fence and trellis at the appeal property. Nevertheless, for the reasons I have outlined I do not consider that the fencing causes harm to the appreciation of the Dollis Valley Green Walk park as a pleasant, landscaped open area, or to the character or appearance of the surrounding area.
11. In addition to the length of fence along the rear of the appeal property's garden, No. 78 also shares one of its long side boundaries with a pathway leading from Western Way into the park. Here, the fence is a mix of timber panels at higher level above concrete panels below. Whilst the lower level concrete panels and concrete posts may well be a legacy of a previous fence, the additional stepped height of the timber panels has raised the height of the enclosure considerably.
12. However, the boundary treatment along either side of the pathway is varied, with the flank walls of outbuildings at both the appeal property and the neighbouring property of considerable height. The fence at the appeal property is a step-change in height from elements of that at the adjacent property, but it is not jarringly so. Moreover, it is clear to users of the pathway that it is a relatively narrow and enclosed path that ultimately opens out onto the park, beyond. The additional height of the fence at the appeal property does not alter that appreciation or otherwise harm the character or appearance of the surrounding area.
13. The appeal property, like its adjoining neighbour, enjoys an elevated position looking over the adjacent area of open space; both being elevated by virtue of the falling ground levels from Western Way towards the open space. The levels between the two properties, be they ground floor level or garden level, are broadly similar to each other. Whilst the overall height of the enclosure along the shared boundary with No. 76 is substantial, the trellis element atop the fence panels mitigates to an extent its overall height.
14. As with views from the park beyond, the fence and trellis' somewhat stark appearance is more to do with its brighter and un-weathered tones than it is due to its overall height. Indeed, given the relative ground floor and garden levels, I do not consider the combined height of the fence and trellis to be harmful to the character or appearance of the appeal property, the neighbouring property or the surrounding area, whilst the trellis panels provide both interest and a degree of mitigation of its overall height.
15. Nor does the fence unduly or harmfully restrict an appreciation of the character or appearance of the verdant sylvan setting and open nature of the Dollis Valley Green Walk park from the neighbouring property, where the neighbouring property's elevated position affords views across the appeal property, and other gardens, towards the verdant backdrop of the park. Furthermore, in time as the colour and tone of the panels weather and take on a more muted appearance, the fence and trellis would be further absorbed into

the varied pattern and muted tones of garden enclosures within the surrounding area.

16. Policy DM01 of *'Barnet's Local Plan: Development Management Policies'* (DMP) (2012) and the Council's *'Supplementary Planning Document': Residential Design Guidance'* (SPD) (2013) set out the Council's approach to protecting the Borough's character and amenity. In seeking to achieve high quality design, proposals should, amongst other matters, preserve or enhance local character; respect appearance, scale and the pattern of spaces and be designed to allow for adequate outlook for adjoining occupiers. For the reasons I have set out, I conclude that the fence as erected is not in conflict with the aims or provisions of DMP policy DM01 or the SPD.

Living conditions

17. The subject fence is taller than would otherwise be allowed by virtue of the permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 and is also of greater height than many other fences around it. Furthermore, the boundary between the appeal property and No. 76 is a reasonably long one and so the fence has a considerable visual and physical presence as a consequence when viewed from the neighbouring property.
18. The Council's reason for issuing the Notice refers to the effect of the fence on adjoining residential occupiers, albeit without stating what effects and upon which amenities. However, it is clear upon reading the totality of the Council's submissions, that consideration of living conditions includes matters of outlook, daylight and sunlight, whilst the appellant provides further justification for the fencing on privacy grounds.
19. There is a significant difference in levels between the ground floor levels of both properties and their gardens, such that the fence, for the majority of its length between the properties, is viewed from an elevated position. Despite the overall height referred to by the Council, I do not consider the fence to be excessively tall. Whilst when viewed from the lower garden level its overall height becomes more apparent, the trellis panels at the top provide a 'lighter' element giving interest to the structure and mitigating the effect of its overall height. It is not therefore, in my judgement, an unacceptably overbearing or overpowering presence upon the neighbouring property in terms of outlook.
20. With regard to sunlight and daylight, I accept that the fence is positioned due west of the neighbouring garden and so could intercept afternoon sunlight, casting shadow over parts of the rear garden and rear elevation of No. 76. However, given the extent of tree and vegetation cover within the adjacent park, this is not likely to be a significant factor and the effects of this upon the amenities and living conditions of No. 76 are likely to be limited as a consequence.
21. For these reasons, I am satisfied that the fence does not have a deleterious effect on the outlook from the rear of the neighbouring property at No. 76 or its garden, or in terms of daylight and sunlight received by that property. As a consequence, there is no conflict with DMP policy DM01 or the SPD.

Other Matters

22. The appellant cites privacy and security concerns as justification for the erection of the fence; the former in relation to inter-visibility between elevated patio / ground floor locations and garden ground level and the latter given the garden's boundary with a public walkway between Western Way and the Dollis Valley Green Walk park. As I have found the fence to be acceptable as erected and therefore absent harm to the character and appearance of the appeal property or the surrounding area, these mitigating factors and justification have not been determinative in my consideration of this matter.
23. There remains a difference of recollection of advice given and discussions undertaken during the Council's enforcement investigation into this matter. These are not material considerations to which I have attributed any weight in my consideration of this matter and are instead matters for the appellant and the Council to resolve.

Conditions

24. The Council have not suggested any conditions nor, as I am satisfied that the fence as erected would not cause harm to the character and appearance of the appeal property or the surrounding area, or to living conditions, do I consider any to be necessary.

Conclusion

25. 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.

G Robbie

INSPECTOR