



Appeal Decision

Site visit made on 20 September 2022

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2022

Appeal Ref: APP/N5090/C/21/3270278

Land at The Studio, 16 North Square, London, NW11 7AD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Michel Einhorn against an enforcement notice issued by London Borough of Barnet.
 - The notice, numbered ENF/1313/19, was issued on 8 February 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a fence along the western boundary in the rear garden.
 - The requirements of the notice are to:
 1. Demolish the fence adjacent to the chain link boundary fence between no 15 and no 16 North Square as seen outlined in red in the attached diagram Appendoix [sic] 1 - photograph. Appendix 2 - Site Plan
 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - deleting the allegation in section 3 and substituting with 'Without planning permission, the erection of bamboo and brushwood type fencing adjacent to the boundary between Nos 15 and 16 North Square';
 - deleting the words 'Demolish the fence' from sub-paragraph 1 of section 5 and substituting with 'Remove the bamboo and brushwood fencing'; and
 - deleting 'Appendoix' and substituting with 'Appendix' in sub-paragraph 1 of section 5.
2. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appellant has referred to the materials used in the fence, its appearance, visibility, other fences locally, privacy and noise concerns, as well as a lack of objection from the Hamstead Garden Suburb Trust. Comments are also made on the Council's character assessment of the area. The neighbouring occupants have also raised concerns on matters including character and appearance, outlook and the Hamstead Garden Suburb Trust Guidance.
4. However, I am unable to consider such matters, insofar as they relate to the planning merits of the case, because an appeal has not been made under

- ground (a), which is that planning permission should be granted for what is alleged in the notice.
5. With reference to the Council's statement, the appellant correctly points out that the appeal property is detached, not semi-detached, and does not benefit from off-street parking.
 6. I have noted the references to correspondence between the parties and to the requests for meetings. I also note the appellant's criticisms of the Council. Nevertheless, for the avoidance of doubt, I have determined the appeal afresh based on all of the submissions made and my own site visit.
 7. Also, for the avoidance of doubt, my decision relates solely to the alleged fence. Matters relating to the legal boundary, damage and allegations over the removal of panels are civil matters between the parties and are not matters for this appeal.
 8. The appellant and the neighbouring occupants both make reference to CCTV cameras at No 15 North Square. However, those are not part of the matters before me, and I make no comment on them.

The Appeal on Ground (c)

9. The ground (c) appeal is that those matters alleged do not constitute a breach of planning control. The onus lies with the appellant to make his case on the balance of probabilities.
10. Article 3 and Schedule 2, Part 2, Class A of the GPDO¹ grant planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. However, paragraph A.1(b) states that development is not permitted by Class A if the height would exceed 2m above ground level.
11. The Council state that the bamboo and willow fence is significantly in excess of that height. Photographic evidence is also provided from the neighbouring occupants which annotates part of the fencing above 2m. Those submissions are consistent with my own observations and no evidence is provided by the appellant which shows the fencing to be within the above stated height limitation. Therefore, on the balance of probabilities, the alleged fencing does not benefit from planning permission granted by Class A of the GPDO. Nor has it been shown that it benefits from an express grant of planning permission.
12. I conclude that the appellant has not demonstrated to the required standard of proof that the erection of a fence was not in breach of planning control. The appeal on ground (c) fails.

The Appeal on Ground (d)

13. A ground (d) appeal is a claim that the alleged breach of planning control is immune from enforcement action due to the passage of time. In order to succeed on ground (d), it is for the appellant to demonstrate (again on the balance of probabilities) that the fence was substantially completed four years before the date of the enforcement notice. The material date is therefore 8 February 2017².

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

² s171B(1) of the Town and Country Planning Act 1990

14. The appellant argues that large parts of the fence have been in situ for more than four years. In support of his case, the appellant has submitted a statutory declaration (SD) from the owner and occupier of the neighbouring property at No 15 during the period between June 1999 to April 2015. The author explains that for the entire period a trellis fence with attached interwoven panels ran alongside the boundary.
15. The SD exhibits two photographs from December 2015 showing differing parts of the fence, which are confirmed as being the same fence that was in existence during the entire period of ownership. However, those photographs show different fencing to that shown in the photographs attached to the enforcement notice. Rather than that described above, the enforcement notice photographs show brushwood type fencing and a bamboo fence sitting inside a chain link fence. The exception to that is the third photograph in the enforcement notice, which appears to show part of the interwoven fence referred to in the SD, running in front of a higher fence, which could be bamboo or brushwood.
16. The appellant has also provided a Determined Boundary Agreement dated 10 January 2019. That is signed by the appellant and the registered proprietors of No 15. It states that the appellant erected a trellis fence in 1989 between the properties and that between 21 September 2017 and 10 October 2017 the proprietors of No 15 erected a chain link fence immediately adjacent to the position of the trellis fence along the whole length of the boundary between the properties.
17. Therefore, based on the above, it appears that at the time the enforcement notice was issued, the fencing along the western boundary comprised a number of differing styles, namely trellising, interwoven sections, chain link, bamboo and brushwood. The Council's case refers to a fence made of bamboo and willow, but it is unclear whether the willow is the brushwood aspect or the interwoven sections. Therefore, for the avoidance of doubt, I will deal with each element in turn.
18. The requirements of the notice include demolishing the fence adjacent to the chain link boundary fence. Evidently the notice does not seek to address that latter part of the boundary fencing. Indeed, the neighbouring occupiers state that they received planning permission for it.
19. Having regard to the above, it is more likely than not, that whatever remains of the trellising and interwoven sections, they were substantially complete more than four years before the date of the enforcement notice. Those aspects have therefore gained immunity from enforcement action through the passage of time.
20. However, by the appellant's own admission, the bamboo fence is new and was added for screening and to reinforce the old fence. I have very limited information on the brushwood part of the fence. Therefore, regardless of whether there has been deliberate concealment with plastic leaf camouflage, I conclude that the appellant has failed to demonstrate, on the balance of probabilities, that the brushwood and bamboo aspects of the fence have gained immunity from enforcement action through the passage of time.
21. Accordingly, I shall correct the allegation and the requirements to specifically refer to the bamboo and brushwood parts of the fence. In the interests of

clarity, I will also correct the allegation to refer to the positioning of the fencing adjacent to the boundary between Nos 15 and 16 North Square. I am able to make those corrections and variations to the notice under the powers transferred to me by s176(1)(a) of the 1990 Act, without injustice to any party.

22. The ground (d) appeal succeeds to the extent explained.

The Appeal on Ground (f)

23. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice – which, under s173(4) of the 1990 Act, shall be to remedy the breach of planning control or to remedy any injury to amenity.

24. The breach of planning control in this case is the erection of a fence along the western boundary and the requirements of the notice are to demolish the fence and remove all materials resulting from those works. The purpose of the notice is therefore to remedy the breach of planning control.

25. Changing the materials or reducing the height of the fence as suggested would not remedy the breach of planning control as the bamboo and brushwood fence as a whole is unlawful.

26. Part of the appellant's ground (f) appeal is that it is excessive to remove all of the fencing for privacy reasons. Notwithstanding my ground (d) findings that the enforcement notice should be corrected to specifically refer only to the bamboo and brushwood elements, such arguments relate to the merits of the alleged development and not the requirements of the notice. Since the appellant has chosen not to pursue an appeal against the enforcement notice on ground (a), for consideration of the deemed planning application, I cannot consider the merits of the fencing under ground (f).

27. Indeed, given the absence of a ground (a) appeal and the purpose of the notice, any lesser step that would not remedy the breach cannot be accepted through a ground (f) appeal.

28. The appeal on ground (f) fails.

Conclusion

29. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

Richard S Jones

INSPECTOR