The Planning Inspectorate

Appeal Decisions

Site visit made on 23 November 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2022

Appeal A Ref: APP/N5090/C/22/3299239
1 Harmsworth Way, London N20 8JT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr W Heneghan against an enforcement notice issued by the Council for the London Borough of Barnet.
- The notice was issued on 13 April 2022.
- The breach of planning control as alleged in the notice is the erection of metal gates adjacent to a highway.
- The requirement of the notice is to: Permanently remove the black gates (as shown edged red on the attached drawing) from the front of the property.
- The period for compliance with the requirement is: 1 Month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.

Appeal B Ref: APP/N5090/W/22/3296709
1 Harmsworth Way, Whetstone, London N20 8JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Heneghan against the decision of the Council for the Council for the London Borough of Barnet.
- The application Ref 22/0264/RCU, dated 19 January 2022, was refused by notice dated 17 March 2022.
- The development proposed is described as "retrospective permission for 2 No 1.3m high sliding gates."

Appeal A Decision

1. 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.

Appeal B Decision

2. The appeal is dismissed.

Preliminary Matters

3. With respect to Appeal B, I have used the description above from the planning application form as I am obliged to. The Council revised the description and their decision notice refers to "associated railings" which the appellant has confirmed were not part of the development being applied for. Furthermore, the term 'retrospective permission' goes beyond the description of the act of development involved.

Appeal A ground (a), the Deemed Planning Application and Appeal B

Main issues

4. The main issue in both cases, is the effect of the development on the character and appearance of the area. In this respect, I will pay special attention to the desirability of preserving or enhancing the character or appearance of the Totteridge Conservation Area (CA).

Reasons

5. The appeal site is located towards the western end of the CA which covers a broad area, dissected through the middle by the busy main road (A5109). As referred to within the Council's CA Character Appraisal Statement[1] (CACAS), this has very wide verges, is heavily tree-lined with some openings and pedestrian paths frequently set behind the verges. Within this context of a verdant, semi-rural street-scene, large dwellings are set back from the main road behind the heavily vegetated boundaries in a spacious manner.

6. The appeal site is located in a more suburban built-up part of the CA which is within the "Pine Grove, Northcliffe Drive, Grange Avenue, Priory Close" character area. Close to the junction of Pine Grove the wooded nature of the area gives way to some large dwellings in broad frontages with dominant brick walls with ornate railings and high gates although they, in turn, soon give way to a number of frontages with low brick walls and a greater variety of hedges and other ornamental planting, without gates. The junction of Harmsworth Way is defined on one side by a long, close-boarded fence with trellising above and on the other side by a property with a large, open front garden and a low clipped hedge. Further along, next to the appeal site, a sub-station is set well-back from the estate road with simple, thin railings separating it from the verge and footpath. The sub-station itself is not in a prominent position and its individual functional appearance is not a general characteristic of the area but the railings allow the view through which means that it is not a stark or dominant enclosure of that site and a good degree of openness is retained.

7. There is therefore some variety to front boundary enclosures and gates in the area and the appellant questions whether some have been authorised. I have no definitive evidence about that but have taken into account the effect of those developments on the character and appearance of the area. If some of those examples do not have planning permission, my decision does not affect the Council's ability to consider the expediency of taking enforcement action. As a general rule however, frontages include low walls interspersed with some landscaping and where more enclosed boundaries have occurred, this is primarily in the form of thin railings at least allowing views through to the garden spaces behind. The long fence close to the junction with Pine Grove has a toned-down appearance that is similar to others in the wider CA which compliments the wooded nature of much of the area.

8. The appeal site is on the southern side of Harmsworth Way. The front of the property has a low red-brick boundary wall which has 2 openings for vehicular and pedestrian access which each terminate on either side with higher brick piers. Above the wall, between the piers, a hedge has grown up which the Council has referred to although neither appeal relates to the growing hedges

[1] Totteridge Conservation Area Character Appraisal Statement, adopted May 2008

or the brick walls. The overall effect of this boundary treatment is a more closed-off appearance than the prevailing openness of other front boundaries along Harmsworth Road. However, the Council has not alleged that planning permission is required for anything other than the gates and so whether or not I allow the appeal it is highly likely that much of that boundary treatment will remain.

9. The gates are on a bottom rail set-into the surface of the driveway and at the time of my site visit were in the open position, largely behind the wall and hedge. I could however closely inspect part of them from the pavement. Both black-surfaced metal gates are of a basic metal rectangular form with a frame with vertical slats between. The thick, vertical slats are arranged at regular, equal intervals with narrow gaps between. The design allows little scope for views through and thus when closed would provide a forceful, oppressive, hard and impenetrable visual barrier, contrary to the general softer, sub-urban appearance of garden frontages along Harmsworth Way, Pine Grove and elsewhere in this CA. Whilst this impact does not occur when the gates are open during the day when the appellant is in residence, there would be a harmful visual impact when closed when the property is not occupied and outside of daylight hours.

10. In relation to the main issue, the development has a harmful impact upon the character and appearance of the area. As such, this does not at least preserve the character and appearance of the CA. This does not achieve the highest standards of urban design, does not respect the local context or distinctive local character and has not created a soft and secure environment. As such, the development does not comply with Policies CS1 and CS5 of Barnet's Core Strategy (CS)[2] and Policies DM01 and DM06 of Barnet's Development Management Policies (DMP)[3]. The harm caused to the significance of the CA is less than substantial but the National Planning Policy Framework (the Framework) requires that great weight should be given to the conservation of designated heritage assets. The Framework also requires that the harm needs to be weighed against the public benefits of the proposal.

Other matters including public benefits

11. The gates have been installed in order to improve security at the premises. It is not clear what other options have been considered to help achieve this. I did notice private security patrol cars and other security systems visible and audible from the road as I walked down Harmsworth Way which indicates to me that this is a problem in the area. I don't know from the submitted evidence how effective the gates or any of these other solutions have been. I also have some limited information about the nature of the problems which the appellant states have included break-ins and minor thefts. The gates may make some difference to crime reduction at this site although at 1.3m, I would expect an agile person to be able to climb over them. There may however be some public benefit to the effect of the current gates on crime reduction at this site therefore. I have insufficient evidence to indicate that this would be of any wider public significance but can give this benefit limited weight.

12. The appellant has referred within the appeal on ground (a) as well as ground (f) to the permitted development fallback position. It seems reasonable to

[2] Barnet's Local Plan, Core Strategy, adopted September 2012
[3] Barnet's Local Plan, Development Management Policies, adopted September 2012

conclude from the information provided that is not disputed by the Council, that gates of similar construction and appearance or even more solid examples could be installed under the provisions of Schedule 2, Part 2, Class A of to the General Permitted Development Order[4] (GPDO). In this position adjacent to a highway used by vehicular traffic the gates would not be permitted if they exceed 1m above ground level. The appellant confirms that this would be 0.3m lower than the gates that have been installed.

13. If the appeals are dismissed and the enforcement notice upheld, there is a reasonable likelihood that an alternative set of gates may be installed afterwards. Installing similar gates at a lower height across both entrances would have a noticeably reduced impact from the present gates. I have no specific design provided to me of any alternative design. However even if replacement gates were of a different, solid construction and hinged rather than sliding operation as suggested by the appellant, the lower height rather than additional solidity would lessen the impact from the existing gates.

14. As such, the permitted development alternative would be an improvement, reducing the impacts upon the character and appearance of the area. As such that alternative provides no weight in favour of the present, more harmful development. It is for the Council to consider whether such permitted development rights should be withdrawn and the lack of such controls is of no weight in my decision.

15. These other matters do not individually or taken together provide public benefits of sufficient weight to outweigh the great weight that I have given the conservation of the CA.

16. For the reasons set out above, having had regard to the development plan as a whole and all other material considerations, I conclude that appeal A on ground (a) and Appeal B should not succeed. Consequently, the deemed planning application shall be refused.

Appeal A on ground (f)

17. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The requirement of the notice is to permanently remove the gates which therefore matches the allegation to erect the gates. As such, the purpose of the notice is clearly to remedy the breach of planning control under the provisions of s173(4)(a) of the Act.

18. The appellant suggests that the notice could have required the height of the gates to be reduced to the permitted development level of 1m. It has been held however that where there is an exceedance of permitted development rights, the whole of the development is unauthorised. Furthermore, reducing the height of these gates to 1m would not authorise them as the GPDO does not grant retrospective planning permission. That alternative step would not achieve the purpose of the notice to remedy the breach of planning control.

19. The appellant also suggests that reducing the height of the gates would remedy the alleged harm caused by the development. The notice doesn't appear to me to have the purpose in s173(4)(b) of the Act, to "remedying any injury to amenity which has been caused by the breach". Even if it did, similar gates at

[4] The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)

a lower height although less harmful than the current gates would still be harmful and so would not achieve that alternative purpose.

20. There is therefore no lesser step in these circumstances that would remedy the breach of planning control given the purpose of the notice. I would add however, that the notice does not interfere with any permitted development rights that may apply to the property. With respect to the appellant's comment on the advice in the Framework that enforcement action is discretionary, it is well established that the expediency of taking enforcement action is not a matter for Planning Inspectors to determine.

21. The appeal on ground (f) therefore fails.

Conclusions

22. With respect to Appeal A, I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Andy Harwood

INSPECTOR