



Appeal Decision

Site visit made on 9 November 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 March 2023

Appeal Ref: APP/B5480/C/22/3303080

7 Elder Way, Rainham, RM13 9SX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter “the Act”).
 - The appeal is made by Mr Belim Hyseni against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 17 June 2022.
 - The breach of planning control as alleged in the notice is:
 - 1) without planning permission, the erection of a first floor front balcony (including French doors);
 - 2) without planning permission the erection of a front boundary treatment in excess of 1 metre high.
 - The requirements of the notice are:
 - (1) Remove the balcony at first floor level (including any balustrades and/or means of enclosure); AND
 - (2) Remove the French doors at first floor level; AND
 - (3) Stop up part of the resulting opening and reinstate a window that is similar to what was there prior to the works occurring. This is a window which is similar (in terms of size, location, and opening mechanisms) to those found at first floor level at nos. 1, 3, 5, and 9 Elder Way. This is also shown on the attached photo for ease of reference; AND
 - (4) Finish any walls installed so that they are of a similar appearance to the rest of the building; AND
 - (5) Demolish to ground level all boundary treatments in the area hatched red on the attached plan; AND
 - (6) Remove all materials, rubble and debris from the site as a result of taking steps (1), (2), (3), (4) and (5) above.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of 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.
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Decision

1. It is directed that the notice be varied by:

- removing the plan attached to the notice and substituting instead the revised plan attached to this Decision;
- in Section 5 deleting requirements (1) to (6) and inserting the following requirements:
 - (1) At front first floor level remove the balustrades around the flat roof and remove the French doors. Restore the opening to its former depth by stopping up the wall, and finish to match the surrounding area of wall.

(2) In respect of the boundary treatment along the line marked from point A to point D on the revised plan attached to the notice:

EITHER - demolish the boundary treatment to ground level;

OR – reduce the height of the boundary treatment to no more than 1 metre measured from ground level;

(3) Remove all debris and waste materials following compliance with requirements (1) and (2) above;

- in Section 6 deleting “2 months” and substituting instead “4 months”.

2. Subject to the variations the appeal is 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.

Ground (a) appeal/deemed application for planning permission

Main Issue

3. The main issues are the effect of the development on the character and appearance of the area, and upon the living conditions of occupiers of nearby properties with particular regard to privacy.

Reasons

4. Elder Way, including the appeal property No.7, is characterised in part by the uniform layout and size of residential plots, with houses and bungalows having a consistent front building line behind short front gardens and driveways. During my visit to the appeal site and the surrounding area I saw that almost all of these front gardens and driveways were open plan allowing wide and long uninterrupted views. I consider the open plan nature of Elder Way to be a strong defining characteristic of the street scene.
5. The appellant has carried out works to the front of the house including the creation of a small balcony area above the roof of the garage conversion, and the construction of walls and gates around the front property boundaries.

Boundary treatments

6. I acknowledge that the materials used and the quality of construction works are of a high standard. However, the boundary walls and gates have introduced a tall and solid barrier which projects outwards and forward of the uniform building line into the previously open plan street scene I have described. I accept there is some permeability due to the use of railings in the gates and in the upper parts of the walls but, nonetheless, I find the development as a whole to be a prominent and strikingly dominant and jarring intrusion into the open plan street scene. As such, due primarily to its height above 1 metre, it significantly and harmfully detracts from the open character and appearance of the area.
7. I appreciate that an enclosed area to the front of the property provides benefits to the occupiers in terms of utility, privacy and security. However, these do not outweigh the harm I have identified.
8. I also acknowledge that following compliance with the notice to remove the boundary treatment, planning permission is then available for the construction

of walls and gates up to 1 metre in height¹. However, since I have no detailed plans of such an alternative scheme before me I am unable to grant planning permission on the “fallback” basis as suggested. That notwithstanding, I accept there is a possibility of the appellant constructing new walls and gates up to 1 metre high following compliance, and potentially using some of the existing materials. I will return to this matter later in ground (f).

Balcony

9. The balcony has been created by the introduction of French doors allowing access out onto the flat roof together with balustrades around its edges on three sides. There are no other front facing first floor balconies that I could see in Elder Way or the surrounding area. Hence, it exists as an isolated feature inconsistent with the prevailing character and appearance of dwellings in the local area.
10. Moreover, given that it provides a facility that could be used for standing and sitting out, by future occupiers if not the current ones, it would permit overlooking of adjacent properties gardens. While the actual level of overlooking and loss of privacy to neighbouring occupiers would be limited, the perception of being overlooked at close quarters and the perceived loss of privacy would be considerable. As such, I find it results in significant harm to the living conditions of occupiers of nearby properties and the appeal must fail.
11. For an appeal on ground (a)/deemed application, planning permission can only be granted for all or part of the matters specified in the alleged breach at Section 3 of the enforcement notice. A Juliet balcony does not form part of those matters. Moreover, requiring one to be installed by imposing a planning condition would not adequately overcome the perception of being overlooked I have described.

Conclusion

12. I have considered whether planning conditions would overcome or adequately mitigate the harm I have identified, but there are none that would do so.
13. To conclude, the boundary treatment is not of a high design quality in terms of its siting and excessive height, resulting from its failure to respect the contextual open plan character and appearance of the surrounding area. The creation of the balcony also detracts from the character and appearance of the area and results in a real and perceived loss of privacy, unacceptably harming the living conditions of occupiers of nearby properties. As such, the development conflicts with the requirements of Policies 7, 26 and 27 of the Havering Local Plan (2021).
14. The appeal on ground (a)/deemed application therefore fails.

Appeal on ground (f)

15. Section 173 of the Act states two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. Hence, an appeal on ground (f) is a claim that the requirements of the notice exceed what

¹ Granted by Article 3 and Class A, Schedule 2, Town and Country Planning (General Permitted Development) (England) Order 2015 – known generally as “permitted development”

- is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach.
16. The notice requires removal of all of the works carried out and hence the purpose of the notice is to remedy the breach of planning control.
 17. As I set out earlier, a Juliet balcony would not adequately overcome the loss of privacy I previously described. Moreover, nothing less than the removal of the French doors and balustrades, and reinstatement of the window opening would fully remedy the breach of planning control. The substance of requirements (1) to (4) must therefore remain.
 18. However, requirement (1) lacks clarity as it refers to a "balcony" and to "balustrades" and to "means of enclosure" - it is only the existing balustrades and French doors that need to be removed. Also, requiring the appellant in (3) to install a window that is "similar" is excessive because, after stopping up of the wall, the breach would be remedied by insertion of any window of the appellant's choosing. I have therefore corrected and varied requirements (1) to (4) accordingly.
 19. With regard to requirement (5) the alleged breach refers to a front boundary treatment (singular), while the requirement refers to all "treatments" in a wide hatched area on the notice plan. A proper interpretation of "boundary" in my view in this context can only relate to the front walls and gates that form a boundary with the highway and with the adjacent properties either side of No.7. As such, I have replaced the notice plan with one which shows the line of the relevant boundary treatment, marked A-D.
 20. Requirement (5) requires complete removal of the boundary treatment. The notice in Section 3 rightly identifies the breach results from the boundary treatment having been constructed "in excess of 1 metre high". Given that permitted development rights have not been restricted in Elder Way I find it is primarily the boundary treatment being over 1 metre in height that results in harm, rather than its intrinsic design.
 21. In this regard, following compliance with the notice, the appellant would be able to exercise "permitted development" rights to erect a similar boundary treatment, limited to 1 metre height, and potentially re-using some of the same materials. As such, I find it would be reasonable in these circumstances to provide an optional requirement such that the appellant can choose to either demolish the boundary treatment completely or, alternatively, reduce its height to no more than 1 metre. I have therefore varied requirements (5) and (6) accordingly.
 22. The appeal on ground (f) succeeds only to the limited extent detailed above, but otherwise fails.

Appeal on ground (g)

23. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed. The appellant seeks a period of 6 months. The notice requires compliance within 2 months although the Council subsequently advised that they would not object to 4 months.

24. Contrary to the Council's suggestion, I take no account of the time that has already elapsed prior to this appeal Decision. This is because the appeal includes ground (a) and so the question of whether any remedial action would be required, if at all, cannot be known until the appeal is determined. Hence it is not unreasonable for appellants to await the outcome of an appeal first before committing themselves to arrangements for financing and undertaking remedial works.
25. That said, I am also mindful that the harm resulting from the breach of planning control should now be remedied as soon as possible.
26. I accept that securing and scheduling suitable contractors and completion of works may take longer than 2 months. However, 6 months seems an unduly long period of time for a relatively minor scheme of remedial works and is not justified. In light of all the circumstances I consider on balance that 4 months would be more reasonable.
27. The appeal on ground (g) succeeds to this limited extent and I have varied the notice accordingly.

Thomas Shields

INSPECTOR

Replacement plan to be attached to the enforcement notice.

