



Appeal Decision

Site visit made on 7 February 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2023

Appeal Ref: APP/A5270/C/21/3291618

17 Highfield Road, Acton, London W3 0AJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Waleed Mohammed against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 29 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a front and side boundary wall and gates.
 - The requirements of the notice are:
 1. Remove the front and side boundary wall and gates; and
 2. Remove all resulting debris and materials from the land. OR
 3. Reduce the height of the front and side boundary wall and gates to no higher than 1 metre and
 4. Remove all resulting debris and materials from the land.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by the Council of the London Borough of Ealing against Mr Waleed Mohammed. This application is the subject of a separate Decision.

Preliminary Matters

3. The evidence before me refers to matters relating to the planning merits of the development including planning policy, that there are other taller boundary treatments, whether there is harm to neighbours amenity, security and that the property is not in a conservation area. However, as there is no appeal on ground (a) and no deemed planning application for me to consider, these matters are not relevant to my decision, which is confined to the remit of determining whether the wall and gates constitute a breach of planning control.
4. Similarly, the misgivings expressed by the appellant regarding the Council's approach to the investigation have no bearing on my consideration of the appeal.

The appeal on ground (c)

5. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
6. Planning permission was conditionally granted by the Council on 10 June 2020 for the construction of a single storey semi-detached bungalow and associated cycle parking and refuse storage, reference 201444FUL.
7. The approved plans are listed in the decision notice and specified in condition two and include reference to a Planning Statement prepared by MZA Planning (dated April 2020).
8. The Planning Statement refers to various permissions at properties along Highfield Road, as well as a planning permission granted on appeal¹ at 38 Lowfield Road, which included an allegedly similar boundary treatment. The appellant's case is essentially that since that permission was referenced in the Planning Statement, that is sufficient to incorporate those details into the planning permission for 17 Highfield Road. As such the wall and gates have planning permission.
9. There is nothing ambiguous about the planning permission in this case. It is evident that the purpose of the reference to the permission at 38 Lowfield Road and those others on Highfield Road, is intended to support the proposed design of the bungalow. There is no suggestion that the proposed development would replicate that at 38 Lowfield Road, nor are any details, other than the appeal decision, provided.
10. Whilst the appellant argues that in the Planning Statement it was *unambiguously confirmed that the front boundary treatment would follow 38 Lowfield Road*, there is no such remark in the statement.
11. The Council acknowledged that in section 7 of the planning application forms (materials) it is stated that the proposed boundary treatment was a new two metre timber fence to the sides.
12. However, the wall and gates, subject of the appeal, are not described in the planning application forms, nor the Planning Statement or shown on the approved drawings. They do not therefore form part of, or benefit, from the planning permission.
13. Although the appellant made representations about the interpretation of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) they did not seek to demonstrate that the wall and gates constitute permitted development. In any case for completeness, I shall address this matter.
14. Permitted development rights derive from a general planning permission granted not by the local authority, but by Government, and which permit certain types of work to be carried out without needing to apply for planning permission, subject to conditions and limitations.

¹ APP/A5270/D/18/3203774

15. Government guidance in Manual for Streets (MfS) is not relevant to a determination about whether development constitutes permitted development.
16. The erection of a gate, fence, wall, or other means of enclosure can be permitted development under Article 3, Schedule 2, Part 2, Class A of the GPDO. However, other than in the case of schools, the erection of a gate, fence, wall, or other means of enclosure over 1m in height, which is adjacent to a highway used by vehicular traffic, is not permitted development and planning permission is required for such a development.
17. The wall and gates surround the sides and front garden of 17 Highfield Road. The appellant does not dispute the height of the wall and gates to be greater than one metre nor that part of the wall and gates, the front section, is located adjacent to the highway.
18. I observed at my site visit that the sides of the wall are not adjacent to a highway used by vehicular traffic due to their location to the side of the land on the boundary with the neighbouring dwellings. However, since they were erected as and are an integral part of the whole development, they constitute part of the breach of planning control.
19. The appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The development is not development that is permitted by any development order and there is no record of planning permission having been granted for it. The appeal on ground (c) fails.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Felicity Thompson

INSPECTOR