

Appeal Decision

Site visit made on 9 November 2022

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2023

Appeal Ref: APP/T5150/C/22/3295976

150 Slough Lane, London NW9 8XH

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended.
 - The appeal is made by Theresa McGoldrick against an enforcement notice issued by the Council of London Borough of Brent.
 - The notice, numbered E/21/0675, was issued on 17 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a front and side boundary fence to the front of the premises ("the unauthorised development").
 - The requirements of the notice are to:
 - Step 1: Demolish the front and side boundary fence to the front of the premises.
 - Step 2: Remove all materials and debris from the premises created as a result of taking the action in step one and restore the front of the premises back to the condition it was in before the unauthorised development took place as shown on the attached photograph.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (e), (f), and (g) 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.
-

Decision

1. It is directed that the enforcement notice be corrected and varied by:-
 - In Schedule 2 of the notice, the addition of the words 'and gates' after the word 'fence'; and,
 - In Schedule 4 of the notice, the addition of the words 'and gates' after the word 'fence' in the Step 1 requirement, and the insertion of the following text after the Step 2 requirement 'OR Step 1 Reduce the front and side boundary fence and gates to a height not exceeding 1 metre' and 'Step 2 Remove all materials and debris from the premises created as a result of taking the action in step 1'.
2. Subject to these corrections and variations, the appeal is dismissed, 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.

Preliminary Matters

3. The unauthorised development consists of a timber fence and gates, but there is no explicit reference to the gates in either the allegation or the Step 1 requirement. Nevertheless, it is clear from the Step 2 requirement that the enforcement notice is targeting both the fence and the attached gates because the photo attached to the notice, which indicates the condition of the site before the unauthorised development was carried out, shows an absence of

both the fence and gates. Having consulted the parties over the inclusion of the word 'gates' in both the allegation and the Step 1 requirement, I am satisfied that the notice can be corrected in this way without causing any injustice to any party.

4. In their statement, the appellant suggests that the fence may not require planning permission. I have therefore dealt with this matter as a 'hidden' appeal on ground (c). The Local Planning Authority (LPA) has had sight of the appellant's statement and were therefore able to respond to this point as part of the appeal proceedings.

The appeal on ground (e)

5. An appeal on ground (e) is that the enforcement notice was not properly served on everyone with an interest in the land affected by the notice.
6. The appellant claims that the notice should not have been served on them at 23 Farrer Road as they no longer own that property. Therefore, they are of the opinion that the Local Planning Authority (LPA) has failed to serve the notice in accordance with the requirements of section 172(2) of the 1990 Act, as amended.
7. Section 172(2) provides that a copy of the enforcement 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, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the LPA, is materially affected. It is for the LPA to decide who is materially affected, but they risk an appeal on ground (e) if they exercise their discretion wrongly.
8. The LPA has provided a copy of the Official Copy of Register of Title held by HM Land Registry, dated 17 February 2022, for the appeal property at 150 Slough Lane, London NW9 8XH. This records the appellant as the named proprietor and shows their address as 23 Farrer Road, Harrow HA3 9LR. It was therefore reasonable for the LPA to serve a copy of the enforcement notice on the appellant at this address.
9. The appellant has been able to submit an appeal against the enforcement notice and argue it fully in the course of these appeal proceedings. There is no suggestion that anyone else should have been served with a copy of the notice and therefore I am satisfied that no one has been prejudiced.
10. For these reasons, the ground (e) appeal must fail.

The appeal on ground (c)

11. The appeal on this ground is made on the basis that the matters alleged, if they occurred, do not constitute a breach of planning control. To succeed on this ground the appeal would need to demonstrate that the alleged breach did not involve an act of development or that planning permission was not required. The burden of proof is on the appellant and the relevant test of the evidence is made on the 'balance of probabilities'.
12. The appellant claims that 'Google' states that planning permission is not required for a timber fence on a detached house, but no evidence has been submitted to support this view. Therefore, there is no compelling evidence before me to suggest that the fence would not amount to an act of development, or that it does not require planning permission.

13. Consequently, the appeal on ground (c) must fail.

The appeal on ground (a)

14. The appeal on ground (a) seeks planning permission for the matters alleged in the notice. In doing so, planning permission is sought for the unauthorised erection of a front and side boundary fence and gates to the front of the premises.

15. The main issues are the effect of the proposal on:

- the character and appearance of the surrounding area; and,
- highway safety.

Character and appearance

16. The appeal property is a two storey detached dwelling set back from the highway with a large driveway to the front of the property. Most of the properties along the street have front boundaries enclosed by low walls and/or mature hedges. There are few examples of high boundary fencing or walls to the front of properties and where they do exist, they detract from the otherwise verdant and spacious character of the area.

17. The unauthorised development has introduced a substantial fence and double gates, consisting of solid timber panels topped with trellis. Given its height, length and solidity, it forms a large, visually obtrusive and discordant feature in the street scene, at odds with the prevailing character of the area.

18. I appreciate the appellant's desire to make the property more secure and to provide greater privacy to the front garden area. However, I am not persuaded that the proposed fencing would be the only way to achieve these aims, particularly as lower and more sympathetic boundary treatments appear to be securing the boundaries of neighbouring properties without issue.

19. There are some limited examples of high mature hedging in the surrounding area, including large conifer trees which mark the boundary with the neighbouring property at 148 Slough Lane. Nevertheless, the planting of trees and other vegetation do not amount to acts of development and, in any case, hedging and trees offer a materially different appearance and so do not result in the harsh visual effects I have described above.

20. Consequently, I find that the development is harmful to the character and appearance of the surrounding area. Therefore, it is in conflict with Policy DMP1 of the Brent Local Plan 2019-2041 (the BLP), Policies D3 and D4 of the London Plan 2021 (the LP) and the associated policies of the National Planning Policy Framework (the Framework), which together seeks to achieve well-designed places where the design of development provides high levels of internal and external amenity and complements the locality by responding to the existing character of a place.

Highway safety

21. The appeal property fronts onto Slough Lane, a busy road serving a suburban residential area, and close to the junctions with Old Kenton Lane and Kingsbury Road. The property is located on the inside of a bend in the road where, prior to the unauthorised development taking place, visibility between

vehicles leaving the drive of the appeal property and those approaching on the adjacent highway would have been limited due to the alignment of the road.

22. The fence runs along the length of the front boundary of the appeal property, and along the adjoining boundary with No.150a Slough Lane. Owing to its height and solid appearance, the fence blocks a driver's visibility from the drive towards oncoming traffic along Slough Lane. It is therefore impossible for the driver of a vehicle leaving the appeal site in a forward gear to have a full view of the pavement, and oncoming traffic along the road, until a large part of the vehicle has left the drive and manoeuvred out over the pavement, and potentially onto part of the carriageway. It would be even more difficult to gain a full view of the pavement and oncoming traffic if a vehicle were reversing off the drive.
23. This lack of visibility gives rise to a significant risk of collisions with users of the adjacent pavement and carriageway. I therefore consider this to result in an unacceptable risk to highway safety, particularly to the safety of pedestrians and cyclists.
24. I therefore conclude that the development results in significant harm to highway safety. This is contrary to Policy DMP1 of the BLP and Policies D3 and D5 of the LP and the associated provisions of the Framework which together, amongst other things, seek to achieve safe, secure and inclusive environments where development can be entered, used and exited safely, and where there would be no unacceptable impacts on highway safety.

Other Matters

25. In support of the appeal, the appellant has drawn my attention to a fence of similar height and design at the neighbouring property at No.148. However, I do not have the full details of this other development before me, nor is it clear if this fence benefits from planning permission. In any case, I have determined the appeal on its own merits and consequent effects.
26. I note the appellant's frustrations with an alleged lack of communication and cooperation from the LPA to resolve the issue. However, these are essentially procedural matters that are beyond my remit insofar as it relates to a consideration of planning merits. Therefore, these matters do not alter my overall conclusion in this case.

Ground (a) conclusion

27. I have found the development to be harmful to the character and appearance of the surrounding area and it compromises highway safety. In these regards, the development is contrary to the above cited policies of the development plan. The other matters and considerations advanced in favour of the scheme are of insufficient weight to justify a decision other than in accordance with the development plan.
28. For these reasons, I conclude that the appeal on ground (a) should fail and therefore planning permission is refused in respect of the deemed planning application.

The appeal on ground (f)

29. This ground of appeal is that the steps required to be taken by the (corrected) notice exceed what is necessary to achieve its purpose.

30. In this case, the notice requires the removal of the fence and gates, and for the land to be restored back to the condition it was in before the unauthorised development took place. Therefore, this suggests that the purpose of the notice is to remedy the breach of planning control in its entirety.
31. The appellant makes the point that a 1 metre high fence could be erected as permitted development, and so reducing the height of the existing fence would represent a lesser step that would remedy the breach of planning control. However, I am mindful that permitted development cannot be granted retrospectively and simply reducing the height of the fence and gates would not remedy the breach in its entirety.
32. Nevertheless, there is a broad discretionary power to deal with the effects of a breach of planning control, insofar as section 173(3) of the 1990 Act allows the steps required by the enforcement notice to be directed to achieving 'wholly or partly' any of the purposes for which the notice was served. I also note that the enforcement regime is intended to be remedial rather than punitive. Therefore, I consider the requirement for the complete removal of the fence and gates to exceed what is necessary, because after its removal the appellant would have the option to construct a fence and gates to a height not exceeding 1 metre as permitted development. Consequently, this represents a realistic fallback position and is an obvious alternative that could be achieved with less cost and disruption than the total removal of the fence. Therefore, the enforcement notice can be varied to include this as an alternative requirement.
33. The LPA suggest that because the fence is constructed from fence panels it would not be possible to alter them to reduce the height of the fence. However, I see no reason why these panels could not be cut down in size by various means, including the use of hand-held power tools.
34. Bringing these points together, I conclude that the appeal on ground (f) succeeds only to the extent set out above, and I shall vary the requirements of the notice accordingly.

The appeal on ground (g)

35. The appeal on ground (g) is that the time specified for compliance falls short of what should reasonably be allowed.
36. The appellant seeks a 6 month period to comply with the notice, on the grounds that the enduring effects of the Covid-19 pandemic have made it difficult to get workers to undertake the necessary work to comply with the requirements of the notice. However, no evidence has been presented to support this claim, and I am mindful that the works required to comply with the requirements of the notice are not particularly onerous or complex.
37. Furthermore, the unauthorised development is causing significant harm to the character and appearance of the surrounding area and has compromised highway safety to an unacceptable degree. The latter poses a very real threat to life and limb, and it is therefore in the public interest for the breach of planning control to be remedied as soon as reasonably possible. This provides a compelling reason not to extend the compliance period beyond the current specified period of 1 month.

38. Consequently, in my view a 1 month period of compliance is a proportionate response to the breach of planning control, taking into account the extent of the development, its harmful effects, and the requirements of the notice.

39. Therefore, the appeal on ground (g) fails.

Overall Conclusion

40. For the reasons given above, and having taken account of all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

J M Tweddle

INSPECTOR