
Appeal Decisions

Site visit made on 9 March 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th April 2023

Appeal A Ref: APP/M5450/C/21/3286793

Land at 215, 217 and 219 High Road, Harrow HA3 5EE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Hamid Ahmed Farooqi against an enforcement notice issued by London Borough of Harrow.
- The notice was issued on 20 October 2021.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised construction of a boundary wall, pillars wooden railings and gate along the front and side boundaries of the forecourt of the land resulting in an unauthorised boundary treatment ("unauthorised development").
- The requirements of the notice are:
 - remove the unauthorised development from the land.
 - remove from the land all materials and debris arising from the compliance with the aforementioned requirements of the notice.
- The period for compliance with the requirements is: two (2) calendar months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (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.

Appeal B Ref: APP/M5450/W/21/3279677

215-219 High Road, Harrow HA3 5EE

- 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 H Farooqi against the decision of London Borough of Harrow.
- The application Ref P/3622/20, dated 7 October 2020, was refused by notice dated 10 February 2021.
- The development proposed is the retention of existing front boundary wall and proposed increase in height.

Decisions

1. The Enforcement Notice subject of Appeal A is corrected and varied by:
 - in the alleged breach delete "a boundary wall, pillars wooden railings and gate along the front and side boundaries of the forecourt of the land" and replace with the wording "a boundary wall, pillars, wooden railings, a metal post and gate along the front boundary of the forecourt of the land and the side boundary of the forecourt of 215 High Road."
 - substituting, in paragraph 6 'four (4) calendar months' as the period for compliance.
2. Subject to the correction and variation, Appeal A is dismissed, the enforcement notice is upheld. Planning permission is refused in respect of Appeal B and on the application deemed to have been made under Section 177(5) of the Act.

Application for costs

3. An application for costs was made by Mr Hamid Ahmed Farooqi against the

London Borough of Harrow in respect of Appeal B. This application is the subject of a separate decision.

Reasons

The site

4. The appeal site comprises a two storey property spanning 215 to 219 High Road. The ground floor of the property is used as a restaurant, whilst the first floor is used for residential accommodation. A large forecourt, which is part of the curtilage of the property, is to its front.

Background

5. An enforcement notice ("the 2010 EN") relating to the appeal site alleged that "without planning permission, the construction of hard surfacing, raising the level of the forecourt of 217-219 High Road ("the Hardstanding") (2) without planning permission the erection on the land of metal posts exceeding 1 metre in height along the front boundary of the land ("the Front Metal Posts") (3) without planning permission the construction of metal posts and railings exceeding 2 metres in height along the side boundary of Nos 213 and 215 High Road ("the Side Metal Posts and Railings").
6. The 2010 EN was upheld as corrected and varied in an appeal decision ("the appeal decision") which also granted planning permission for the hard surfacing and raising the level of the forecourt of Nos 217-219 High Road subject to a condition relating to the forecourt boundary of Nos 215 and 217.
7. From the appeal decision there are several matters relevant to the current appeal given that they both relate to the same site and some of the same boundaries. I set these out for context. In the appeal decision, the boundary between Nos 213 and 215 (incorrectly referred to as 211) was described as comprising "four metal posts (all in excess of 2m in height). Welded to the posts are metal railings. These metal railings are less than 2m in height." The appeal decision corrected requirement 5(iii)(b) on the 2010 EN so that the metal posts on this boundary did not exceed 2 metres in height above ground level. The railings between these metal posts were found to be under two metres in height in the appeal decision. It appears that this requirement was then complied with, and the boundary to Nos 213 and 215 is independent of any other boundary treatment at the appeal site.
8. The appeal decision also stated that there were "steps between the forecourt at No 215 and the hard-standing at Nos 217 and 219." Hence, the ground in the forecourts of No 215 and Nos 217/219 was not level. Paragraphs 16 to 24 of the appeal decision set out the reasons why the condition was imposed, which specifically referred to the forecourt boundary of Nos 215 and 217 and not any other boundary. Images provided by the Council show that no fence, wall or other means of enclosure not exceeding two metres in height above ground level was erected on this boundary within the stated timescale or since then.
9. The appeal decision and the 2010 EN set out that metal posts exceeding a metre in height were across the front boundary of the forecourt next to the pedestrian footway. Further, according to the appeal decision, the boundary between Nos 219 and 221 comprised of "a low brick wall with three brick piers and in between the piers are metal railings. The brick piers are marginally in excess of 2m in height."

Appeal A on ground (c)

10. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof here lies with the appellant. In this case, the appellant's case on ground (c) relates solely to the side boundary treatment between Nos 213 and 215. They claim that there has not been a breach of planning control in respect of that boundary treatment.
11. Although the allegation refers to 'side boundaries', as this is preceded by 'boundary wall, pillars wooden railings and gate' and the boundary of Nos 213 and 215 consists of metal posts and railings, I am of the view that the notice does not target the boundary of Nos 213 and 215. Therefore, I have not considered ground (c) further, and it does not succeed. Also, for the reasons set out, the notice does not need to be corrected or varied.

Appeal A on ground (d)

12. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that, at the date that the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice.
13. The appellant says that, when the notice was issued, it was too late to take enforcement action against the boundary treatment between Nos 219 and 221.
14. Section 171B(1) of the Act provides that, in respect of the alleged building or other operations in, on, over or under land targeted by the notice issued on 20 October 2021, no enforcement action would have been possible after the end of the period of 4 years beginning with the date on which the operations were substantially completed. So, if the alleged operational development had already occurred before 20 October 2017 and it had been continuous since that time, and the Council could possibly have taken action in respect to it, then the appeal should succeed on ground (d).
15. Contrary to the Council's view, the appeal decision did not make a finding on the boundary wall between Nos 219 and 221 as the Inspector stated "no enforcement action has been taken against this boundary."
16. Photographs show that the boundary wall and railings between Nos 219 and 221 have not been altered between 2010 and 2021. Therefore, despite the height of the boundary wall and railings, they have been present on site for more than 4 years before the notice was issued.
17. Even so, the Council assert that the boundary wall and railings between Nos 219 and 221 have now been merged/attached to other elements of the unauthorised development, and as a result, they form a new structure on the land and do not therefore exceed the 4 year period for immunity. The Council rely on *Oates v SSCLG & Canterbury CC [2018] EWCA Civ 2229*.
18. Immediately next to the brick pier (part of the boundary wall and railings) at the back of the pedestrian footway is a metal post. This post was subject of the 2010 EN and the appeal decision required it, together with other metal posts along the site's frontage, to be removed from the land or reduced to a height not exceeding a metre above ground level. Based on the images between 2010 and 2018, it appears that all of the metal posts were removed except for the one next to the brick boundary wall and railings between Nos 219 and 221.
19. The metal post is not part of the boundary between Nos 219 and 221 despite

its proximity, though it does now facilitate a gate across the front boundary. The gate connects to the brick wall, brick piers and wooden railings erected across the front boundary of Nos 215 to 219, before returning to the front elevation of No 215. Hence, the metal post is part of that boundary treatment which encloses an outdoor seating area used in connection with the restaurant. Although the use of the forecourt is not subject of this appeal, images indicate that the boundary treatment erected in front of Nos 215 to 219 and within No 215 has been erected sometime after April 2018.

20. Given this, the boundary between Nos 219 and 221 and the boundary treatment erected in front of Nos 215 to 219 and within No 215 are two separate operations that were substantially completed several years apart. The former was outside the four-year period, the latter not. The metal post physically defines the start and end of the two separate operations. Hence, the newly erected boundary treatment is not reliant or not physically part of the boundary wall and railings between Nos 219 and 221 which has remained since at least 2010.
21. As such, the boundary between Nos 219 and 221 was on the land for more than 4 years before the notice was issued, and, on the balance of probabilities, at the date that the notice was issued, no enforcement action could be taken in respect of it. It follows that it would be appropriate to correct the allegation so that it does not target the boundary between Nos 219 and 221. Subject to this, the appeal on ground (d) succeeds.

The deemed planning application (Ground (a) on Appeal A) and Appeal B

Preliminary Matter

22. A brick wall, brick piers and wooden railings have been erected across the front boundary of Nos 215 to 219, before returning to the front elevation of No 215. The description of development for the scheme subject of Appeal B seeks to retain the boundary treatment but increase its height. The wall in situ (Appeal A) is not of the height proposed on the submitted plan for Appeal B, though the siting, design and materials used are the same. As such, they raise the same issues, albeit the scheme subject of Appeal B would be higher. I have considered both appeals on this basis.

Main Issue

23. The main issue is the effect of the proposals on the character and appearance of the area and, if any harm would occur, whether this is outweighed by the need for the development.

Reasons

Proposed development in Appeal B

24. The proposed development would physically separate the forecourt from the pedestrian footway and remove the forecourt's open character, which is a positive characteristic of neighbouring commercial premises either side of Whitefriars Drive. The siting, height and design of the development proposed, particularly the section across the site's frontage, is a dominant and imposing feature that is detrimental to the character and appearance of the locality. As such, it does not respond positively to its context.
25. I recognise that the boundary between Nos 219 and 221 does affect the openness of the forecourt, but not to the harmful degree that the proposed development would. Similarly, the metal posts and railings along the boundary

between Nos 213 and 215 lessens the openness of the forecourt, but due to the design of this boundary, it allows views through unlike the appeal scheme, and as such, it does not justify the proposal's harmful effect.

26. Concerns about the loss of soft landscaping have been raised by the Council, but the character and appearance of the forecourts in front of the commercial premises on the western side of the road is dominated by hard landscaping. I note the loss of the soft landscaping, but it does not amount to a detrimental impact as the Council suggest.

Retaining the as-built development – Appeal A

27. In the event that I do not find the proposed development to be acceptable, the appellant suggests that planning permission could be granted for the as-built development shown on plan Ref: FRQ.PA.2020.PA102 Rev P01. This is the version of the boundary wall currently on site and subject of Appeal A under ground (a). This version of the boundary wall would not be as high, but it causes harm to the character and appearance of the area, especially in relation to the forecourt's open character. This is due to its design, siting and height.

Other developments

28. On the opposite side of the road there are a handful of examples of boundary treatments sited along the back of the pedestrian footway. However, they are not of the same height as that proposed or in situ, and the character of development on that side of the road differs as development is closer to the road, and therefore, an open character does not exist.
29. Unlike the appeal site, the premises near to the development at 294 Uxbridge Road are not close to or hard up to the pedestrian footway. Also, the schemes subject of Appeals A and B are not directly comparable to the development at 372-374 Northolt Road as that enclosure is much lower in height and of a different design. Thus, it has a different effect on the character and appearance of the area even if the adjoining forecourts have an open character.

The need for the development

30. The appellant claims that safety regulations require a minimum boundary treatment above the raised floor level. Details of the relevant safety regulations are not before me, and the appellant is unclear about what the minimum requirement is above the raised floor level. I understand the health and safety reasons why a barrier of some sort may be needed, given the use of the forecourt. However, I attach little weight to the need for the proposed development or the as-built development in achieving this due to the lack of explanation, details of the relevant regulations and the exploration of any reasonable alternatives. Furthermore, I do not have any substantive details of how reliant the restaurant is on the continued use of the outdoor dining area in viability terms. Therefore, this matter carries little weight.

Conclusion on the main issue

31. In this case, the proposed development and the alternative as-built development would and do cause significant harm to the character and appearance of the area. This is not outweighed by the need for the development. Either version of the boundary wall is not, and would not be high-quality development. Accordingly, I conclude that they conflict with Core Policy CS 1 B of the Harrow Core Strategy, Policy DM 1 of the Harrow Development Management Policies and Policy D3 D1) and 11) of The London

Plan. Jointly, these seek, among other things, developments achieving a high standard of design and layout, and to respond positively to the local context, in terms of design, siting, height, and reinforce the positive attributes of local distinctiveness.

32. Although the main parties refer to the Residential Design Guide Supplementary Planning Document, it is not relevant in this case as the scheme does not relate to a residential development.

Other matters

33. I agree with the main parties that either scheme would not give rise to harmful effects on neighbouring occupants' living conditions, the use of the pedestrian footway or highway safety. However, these matters do not alter or outweigh the harm that I have identified in respect of Appeals A and B.
34. The appellant also refers to the raised forecourt now providing easy access into the internal and external parts of the restaurant. Be as that may, the forecourt is not subject of Appeal B nor is its use included as part of the notice to which this appeal relates. I have considered the appeals on their planning merits.

Conclusion on ground (a) (Appeal A) and Appeal B

35. The schemes subject of Appeals A and B do not accord with the development plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this. I am satisfied that ground (a) (Appeal A) should fail and the deemed application for planning permission should be dismissed. Moreover, I conclude that Appeal B should be dismissed.

Appeal A on ground (f)

36. An appeal under ground (f) is that the appellant considers that the notice's remedial steps go beyond what is reasonably necessary to remedy the identified harm. In this respect it is important to assess whether the purpose of the notice is to remedy the breach or, alternatively, to remedy any injury to amenity. In this case, although the notice seeks to address both, its primary purpose is to remedy the breach.
37. The appellant considers that the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control. In their view, there is a realistic prospect of permitted development rights being used to erect a 1 metre high boundary treatment next to the footpath. Although not a point made by the appellant, by extension, the same could theoretically apply to the boundary wall within the forecourt of No 215.
38. Whilst enforcement action is intended to be remedial rather than punitive, permitted development rights do not apply if, in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful.
39. The metal post next to the boundary between Nos 219 and 221 was not removed or reduced in height as required following the appeal decision relating to the 2010 EN. The metal post is now an integral part of the unauthorised development as it facilitates the gate. Therefore, permitted development rights do not apply in this case and there is no real prospect of the fallback position advanced taking place in current circumstances as to do so would be without the benefit of planning permission.

40. Given this, there is no obvious alternative or lesser step that would remedy the breach. Retaining the unauthorised development would not achieve that, nor would the appellant's suggested variation. For these reasons, the appeal on ground (f) fails.

Appeal A on ground (g)

41. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed.
42. The works required by the notice are not excessive or time consuming. They could be carried out relatively quickly. However, as the Council acknowledge securing the services of a contractor could take one to two months. This points to the need for a longer time period than the two months stipulated. The Council do have the power under section 173A(1)(b) of the Act as amended to extend the compliance period, but equally there is no public interest in not varying the notice to achieve the same proportionate objective for all concerned. It is therefore appropriate to extend the time period for compliance to four months.
43. I note the appellant's points about not being put into financial hardship, but there is no substantive evidence to support a longer time period than the four months that I have found to be appropriate for the reason set out. On this basis, Appeal A on ground (g) succeeds to this extent.

Overall Conclusions

44. I conclude that the notice does not target the side boundary treatment between Nos 213 and 215. Hence, it has not been necessary to consider the substance of Appeal A on ground (c). I also conclude on the balance of probabilities that the boundary wall between Nos 219 and 221 took place more than 4 years prior to the issue of the enforcement notice and so, on the date that the enforcement notice was issued, the time for taking enforcement action as set out in section 171B(1) of the 1990 Act as amended had expired. On this basis, the appeal succeeds on ground (d) but it is appropriate to correct the allegation so that it does not target the boundary between Nos 219 and 221.
45. For the reasons given above, I conclude that ground (a) on Appeal A and Appeal B together with ground (f) on Appeal A should not succeed but conclude that the period for compliance with the notice falls short of what is reasonable. The appeal on ground (g) succeeds to that extent.
46. The overall outcome is that I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Andrew McGlone

INSPECTOR