The Planning Inspectorate

Appeal Decisions

Site visit made on 19 April 2023

by D Boffin BSc (Hons), DipTP, MRTPI, Dip Bldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 16th May 2023

Appeal A Ref: APP/B3030/C/22/3308650
'Land' on 218 London Road, Balderton, Newark-On-Trent, NG24 3HD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal is made by Mr Paul Roehricht against an enforcement notice issued by Newark & Sherwood District Council.
- The notice was issued on 10 October 2022.
- The breach of planning control as alleged in the notice is:
  Without planning permission, 'development' consisting of the erection of means of enclosure consisting of railings with timber inserts and gates (x2) to the front of the property (adjoining the highway). (as shown within photographs 1 & 2 and identified with an 'X' on the site plan).
- The requirements of the notice are:
  A. Remove the entire railings and timber inserts from along the top of the existing front boundary wall and reduce the height of the gates (as shown within photographs 1 & 2 and identified with an X' on the site plan) to a height no greater than 1m and remove from the land all resultant waste and materials.
- The period for compliance with the requirement is: 275 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the 1990 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 1990 Act.

Appeal B Ref: APP/B3030/W/22/3308662
218 London Road, Balderton, NG24 3HD

- The appeal is made under section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by Mr Paul Roehricht against the decision of Newark & Sherwood District Council.
- The application Ref 22/01590/HOUSE, dated 11 August 2022, was refused by notice dated 10 October 2022.
- The development proposed is erection of solid railings and electric gates to front of property.

Decisions

Appeal A

1. 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.

Appeal B

2. The appeal is dismissed.

Procedural Matters

3. As set out above there are two appeals on this site. They relate to the same site and the same development. To avoid duplication, I have dealt with them together, except where otherwise indicated.

4. The evidence before me contains details relating to the health conditions of one of the appellant's dependants. I consider that I do not need to refer to the detail of the health conditions cited. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 and to the evidence regarding the appellant's family circumstances and the reasons for requiring the railings and gates. Such a duty does not necessarily override other considerations, but it is a factor to be weighed in the planning balance.

The ground (a) appeal and deemed planning application (Appeal A) and Section 78 appeal (Appeal B)

Main Issue

5. The main issue is the effect of the development on the character and appearance of the surrounding area taking into account the appellant's personal circumstances.

Reasons

6. The appeal property is a traditional detached dwelling which is close to the pavement of London Road. It is in a largely residential area on a main thoroughfare. Most dwellings in the immediate vicinity are also sited close to that thoroughfare and there is variety to the style and age of those dwellings. Nevertheless, the surrounding area has an urban grain formed by the proximity of the dwellings to the road and each other. The boundary treatments are varied, but the frontages of those gardens are generally composed of relatively low walls in brick or low fences/railings, some have hedges above, or are wholly formed of hedging. There are some fences of a height of around 2 metres on return boundaries and there are some railings. However, the generally low boundary treatments and the hedges/landscaping to the frontages within the gardens convey a sense of space to the surrounding area. Moreover, the railings in the immediate vicinity are open designs without infill panels. These factors help to soften the urban grain.

7. The Council's Householder Development Supplementary Planning Document (SPD) provides guidance on the erection of boundary treatments. It states, amongst other things, that '*The general principles to guide the choice of boundary treatment and where permission is required the aspects against which a proposal would be considered include: (i) Whether the scale, height and choice of material is in keeping with the character and appearance of the dwelling and surrounding area, and is not considered as too intrusive – particularly important where a treatment is proposed on a corner plot. (ii) Whether the proposed treatment would create an oppressive appearance. This is particularly important where a particular treatment is proposed for security reasons*.'

8. The railings and gates that have been erected consist of a metal frame with composite board infill panels. The gates are around 1.8 metres tall. The railings have been erected on the top of a pre-existing brick wall and the combined height of the railings and wall is the same as that of the gates. As

such the railings and gates extend across the whole of the site frontage and they are of a solid form. The height and solid form of the boundary treatment contrasts markedly with the sense of space that characterises the surrounding area. Given its length and prominent roadside location that boundary treatment causes significant harm to the character and appearance of the area.

9. I appreciate the appellant's desire to provide a private, safe and secure place for the dwelling's occupiers especially given the cited health issues of their dependant. Due to the dwelling's location close to a busy main thoroughfare I recognise that there is often a difficulty in achieving these aims as is the case here. Moreover, the highlighted health issues of their dependant increase those difficulties and the importance of meeting those aims.

10. However, it appears to me that those aims could be achieved by a more transparent form of boundary treatment. Moreover, there is no evidence as to why it needs to be 1.8 metres tall. The appellant has suggested as part of his ground (f) appeal that every other board could be removed within the railings and that the top part of every other board could be removed within the vehicular access gate. The only details of how that would be achieved is provided by a sketch plan. Furthermore, the appellant has stated that the boundary treatment was erected for privacy reasons as the dependant prefers to wonder around the house unclothed. Therefore, removing every other board would not meet the appellant's aim of privacy. Nonetheless, I noted on site that some of the front windows have blinds at them which could be utilised to maximise privacy within the house.

11. In any case, given the limited details relating to the alternative scheme I cannot be sure that it would be practical to remove every other board /part of every other board given the method of construction that appears to have been utilised for the gates and railings. In addition, I have little to demonstrate that the finished boundary treatment would be satisfactory in appearance or that it would overcome the identified harm.

12. Likewise, it has not been demonstrated that the boundary treatment that has been constructed is the only way to address the appellant's aims of privacy, security and safety. I have little evidence to show whether other options, such as a boundary treatment of a different type or design have been considered in any detail. Accordingly, I consider that alternatives would be available whereby privacy, security and safety for all the occupiers of the dwelling could be achieved without harming the character and appearance of the area.

Planning balance and conclusions – Appeal A and Appeal B

13. Dismissing the appeal would mean that the appellant may have to consider other options for meeting their family's living needs. Nevertheless, there is little evidence before me to demonstrate that the appeal development is the only means by which such needs may be met. In my judgement, in this case the appellant's personal circumstances do not outweigh the harm I have found. Accordingly, dismissing the appeal would be a proportionate response given the identified harm. Moreover, given the compliance period of 275 days (equivalent to 9 months) the appellant would have a reasonable and proportionate amount of time to discuss with the Council an alternative scheme for the boundary treatment, gain planning permission if required for it, raise sufficient funds for the works and to implement that alternative scheme.

14. For the reasons given above and taking into account all other matters raised, I conclude that the development has caused significant harm to the character and appearance of the area. It follows that the development conflicts with Core Policy 9 of the Amended Core Strategy that seeks, amongst other things, a high standard of sustainable design that is of an appropriate form and scale to its context. It also conflicts with Policies DM5 and DM6 of the Allocations & Development Management DPD which, amongst other things, seek that the rich local distinctiveness of the District's landscape and character of built form should be reflected in the form, design, materials and detailing of development and that planning permission will be granted for means of enclosure providing that the proposal respects the character of the surrounding area.

15. It also does not comply with section 12 of the National Planning Policy Framework which, amongst other things, states that planning decisions should ensure that developments are sympathetic to local character, including the surrounding built environment and landscape setting. The development also does not comply with the guidance in the SPD.

16. In this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.

Appeal A

17. For the reasons given above, I conclude that the appeal should not succeed. 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.

Appeal B

18. For the reasons given above I conclude that the appeal should be dismissed.

The ground (f) appeal (Appeal A)

19. Section 173 of the 1990 Act indicates that there are 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. The requirements of the notice would ensure that the railings are removed, and the gates reduced to 1 m high. The reduction in heights would bring the gates within the terms of the planning permission granted for a gate adjacent to a highway in the GPDO[1] at Article 3, Schedule 2, Part 2, Class A. It is evident from the case the Council has put forward and the requirements of the notice that the notice seeks to remedy the breach of planning control.

20. The appellant has stated that it is a huge safety risk for their dependant to reduce the height of the gates to 1m. I accept that 1m high gates would not provide the same level of safety and security as the gates as erected. However, other than complete removal of the gates I cannot think of any other alternative that would also achieve the purpose of the notice. Moreover, I have found that it has not been demonstrated that the appellant's suggested alternative of removing every other board/part of a board would be practical to

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

implement, satisfactory in appearance or that it would overcome the identified harm.

21. Therefore, in my view reducing the gates to 1m high is a proportionate way in which to remedy the breach. Accordingly, what is required by the notice is not excessive and the ground (f) appeal fails.

D Boffin

INSPECTOR