



Appeal Decision

Site visit made on 16 May 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2023

Appeal Ref: APP/U5360/C/22/3301215

20 Middleton Road, Hackney, London E8 4BL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Jacqueline Grudzinskas against an enforcement notice issued by the Council of the London Borough of Hackney.
- The notice was issued on 19 May 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of new boundary treatment, the erection of a bin store and the erection of a pergola structure.
- The requirements of the notice are to:
 - (1) Remove the pergola from the front elevation of the building as shown in appendix 1 'Photograph of pergola submitted with application ref: 2021/3283'.
 - (2) Remove the timber fencing that has been installed atop of the existing brick wall as shown in appendix 2 'Photograph of boundary treatment submitted with application ref: 2021/3283'.
 - (3) Remove the timber bin store that is located facing onto Middleton Road as shown in appendix 3 'Photograph of bin store submitted with application ref: 2021/3283'.
 - (4) Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;
 - (5) Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is: Three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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 is varied by:
 - At section 5 (2), after '2021/3283' insert the words 'Or reduce the height of the timber fencing so that it does not exceed 1 metre above ground level'.
 - At section 5(4) delete the following 'Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;'.
2. Subject to the variations above, 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.

Main Issue

3. The main issue of the appeal is the effect of the scheme on the character and appearance of the area.

Reasons

4. The appeal site comprises a two storey end of terrace house constructed in a light brick, with brown hanging tiles, which fronts onto Middleton Road, at the junction with Mayfield Road. The Albion Square Conservation Area (ASCA) is located to the east of the appeal site, on the other side of Mayfield Road. Although not specifically identified within the Council's reasons for taking enforcement action, it is clear from the Council's Statement of Case its concerns regarding the effect of the development on the character and appearance of the area arise, in part, due to its proximity to the ASCA. The appellant has addressed this in their submission and so they would not be prejudiced by my consideration of this through this appeal.
5. From my observations on site, the heritage significance of the ASCA is derived from the high quality historic buildings, the use of traditional materials and the siting of the buildings and their relationship to open space. Although the appeal site is located outside of the ASCA, there are views to and from the appeal site and the ASCA. Individuals entering the ASCA are likely to pass the appeal site and view it as part of the transition between newer development outside of the ASCA and Victorian buildings contained within. As a consequence, in my view, the appeal site comprises part of the setting of the ASCA.
6. Paragraph 206 of the National Planning Policy Framework (2021)(the Framework) states that proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.
7. Although the design of boundary treatments in the area varies, they are generally constructed in a buff brick, which reflects the building materials used in the adjacent ASCA. Brick walls along the appeal side of Middleton Road are generally low level, which affords a sense of openness and, together with the materials used, makes a positive contribution to the character and appearance of the area and provides a gradual transition which helps preserve the significance of the ASCA.
8. Policy LP1 of Hackney's Local Plan (2020)(the HLP) and policy D3 of the London Plan (2021)(the LP) both seek development which responds to local character and policy D4 of the London Plan (2021)(the LP) seeks good design. The Residential Extensions and Alteration SPD 2009 (the SPD) seeks development which respects the architectural character of the original building and its setting.
9. The timber fencing which has been erected, with its horizontal design, contrasts with the more traditional building materials used elsewhere along Middleton Road and creates a sense of enclosure, which is harmful to the character and appearance of the area. The bin store is also constructed in timber with a similar horizontal design and, given its size and proximity to the highway, appears a dominant, incongruous feature which diminishes the character and appearance of the area.
10. Under ground (f), the appellant has advanced an alternative scheme, which would involve reducing the fence so that it has a height of 400mm on top of the brick wall and removing the timber frame bin store and re-instating the brick wall with a 400mm high timber fence above. Section 177(1)(a) of the Act provides that I may grant planning permission in respect of the matters stated

in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters.

11. The reinstatement of a section of brick wall and erection of a 400m high timber fence above, does not form part of the matters which are alleged in the enforcement notice. Although section 173(5) of the Act provides that an enforcement notice may require (b) the carrying out of any building or other operations, the enforcement notice does not require this. Furthermore, reducing the fence in height would not address the harms I have identified above. Even if reduced in height to 400mm, given the prominence of the location, I consider the harms I have identified above would still arise.
12. The pergola, also constructed in timber, is located to the front of the dwelling. The use of timber contrasts with the use of brick and tiles used in construction of the main dwelling. Structures such as this are not typically located to the front of dwellings in this area and, due to its substantial height and prominent position, it appears an incongruous, dominant feature which diminishes the character and appearance of the area.
13. Although advanced under ground (f), the appellant suggests finishing the pergola with dark wood staining and make provision for climbing plants to horizontal and vertical wood sections to soften/green the pergola. Given the substantial size of the pergola, I consider planting is unlikely to sufficiently mitigate its effect on the character and appearance of the area. Furthermore, planting would require on-going maintenance, which I do not consider would be reasonable to require by condition.
14. Although timber is used elsewhere in the area, this tends to be for architectural features such as doors and windows, or in the construction of outbuildings to the rear of dwellings or fencing on side returns. A number of properties have positioned modest wooden trellis panels above brick walls in the area. However, I do not know the circumstances around their erection. Furthermore, given their limited size, I do not consider they are comparable to the appeal scheme before me.
15. The appellant suggests that the works were intended to personalise the dwelling, add visual interest to it, stop rubbish being discarded in the front area and enhance privacy. I appreciate that the Covid-19 pandemic has reinforced the importance of outdoor residential space. However, while the fencing provides enhanced privacy for the occupants of the dwelling, it would be possible to use planting to afford a degree of privacy and deter individuals from discarding rubbish. Housing provision within the area would not be increased by the appeal scheme. I therefore afford these matters very limited weight.
16. Thus, for the reasons given above, I conclude that the appeal scheme is harmful to the character and appearance of the area and fails to preserve those elements of the setting that make a positive contribution to the ASCA. This is contrary to policy LP1 of the HLP and policies D3 and D4 of the LP, the SPD and the expectations of the Framework, the requirements of which are set out above.

Conclusion

17. Thus, for the reasons given above, I find the appeal scheme conflicts with the development plan as a whole and there are no material considerations which

indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

18. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or as the case may be, to remedy any injury to amenity which has been caused by any such breach.
19. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms... of any planning permission..., by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach. Given the requirements of the notice, I consider the purpose of the notice is to remedy the breach.
20. Varying the notice to require reduction in the height of the fence to 400mm above the brick wall, inserting a new section of wall with fencing above and retaining the pergola, albeit with plants and staining, would not restore the land to its condition before the breach took place and so would not remedy the breach. Nevertheless, enforcement action is intended to be remedial, not punitive.
21. Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Although permitted development rights cannot be applied retrospectively to development already carried out, were I to uphold the notice, it would be possible for the appellant to erect another section of fence up to 1m in height above ground level.
22. While I have had regard to *Ahmed v SSCLG & Hackney LBC* [2014] EWCA Civ 566, I consider this is an obvious alternative which would overcome the planning difficulties at less cost and disruption than total demolition. I shall therefore vary the notice to give the appellant the option of reducing the height of the fence to reflect the deemed planning permission that is granted by the GPDO.
23. Requirement (4) of the notice requires the appellant to make good all damage to the Property resulting from the removal of the unauthorised works. However, the requirement is ambiguous and in my view is unnecessary to remedy the breach. Since deleting the requirement would not make the requirements more onerous, I consider it can be deleted without causing injustice to either party.
24. Thus, I shall correct and vary the notice as set out above. The appeal under ground (f) succeeds to that extent.

Conclusion

25. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it and refuse to grant planning

permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeal on ground (f) succeeds to that extent.

M Savage

INSPECTOR