



Appeal Decisions

Site visit made on 6 June 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 August 2023

Appeal A Ref: APP/H5390/C/22/3302214

Appeal B Ref: APP/H5390/C/22/3302215

Land at 4 Tyrawley Road, London, SW6 4QQ

- Appeal A is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Anne France Van De Put against an enforcement notice issued by London Borough of Hammersmith and Fulham.
 - Appeal B is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Alessandro Manfredi against the same enforcement notice issued by London Borough of Hammersmith and Fulham.
 - The notice, numbered 2022/00264/BOUND, was issued on 14 June 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of a two timber trellis panels exceeding 1 metre in height located on the side boundaries within the front garden.
 - The requirements of the notice are to:
 - A. Remove the two timber trellis panels located on the side boundaries within the front garden
 - or
 - A. Reduce the height of the two timber trellis panels located on the side boundaries within the front garden to 1 metre as measured from ground level.
 - The period for compliance with the requirements is two months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) 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.
 - Appeal B is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decisions

Appeals A and B

1. It is directed that the enforcement notice is corrected by:
 - deleting 'a' after the word 'of' in the first line of the alleged breach in section 2; and
 - replacing the letter 'A' with the letter 'B' before the second option in section 4.
2. Subject to the corrections, the appeals are 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 (Appeal A).

The Enforcement Notice

3. The alleged development is '*the installation of a two timber trellis panels exceeding 1 metre in height located on the side boundaries within the front garden*'. That would be more clearly described as 'the installation of two timber trellis panels...'. Also, the second requirement option should be numbered 'B' rather than 'A'. I am able to make those corrections under the powers transferred to me by s176(1)(a) of the 1990 Act, without injustice to any party.

The Appeals on Ground (c)

4. For the appeals to succeed on ground (c) the onus lies with the appellants to demonstrate, on the balance of probabilities, that the matters alleged do not constitute a breach of planning control.
5. Consideration of ground (c) involves a two-stage process: whether the matters constitute 'development' requiring planning permission, and, if so, whether the 'development' already benefits from a grant of planning permission.
6. S55(1) of the 1990 Act provides a broad definition of 'development' and includes building operations in, on, over or under land. S57 of the 1990 Act provides that, subject to exclusions, planning permission is required for development.
7. The term 'building operations' is defined for the purposes of the 1990 Act in s55(1A) as including additions to buildings. S336(1) of the 1990 Act defines a building as including any structure or erection, and any part of a building, as so defined.
8. I appreciate that the trellising does not form a solid structure. Nevertheless, it is commonly found as a supplementary part of a boundary enclosure, as is the case here. The panels are physically attached to the side walls thereby indicating a significant degree of permanency. Indeed, there is no indication that they are a temporary measure or that the intention is to remove them in the foreseeable future.
9. The trellis fences are also significantly higher than the walls to which they are attached, as well as most other means of enclosure within the street scene, and are not therefore *de minimis* in nature. Rather, for the reasons set out under ground (a), the trellising has a material and harmful effect and as such is not too trivial or minor to merit consideration, as suggested. I understand the intended function is to support the growth of climber plants but the effect is to add significant height to the existing means of enclosure.
10. I appreciate that the trellising has a degree of visual permeability, but that argument could be similarly applied to railings and is not sufficient on its own to exclude it from the definition of development.
11. Therefore, having regard to their size, permanency and attachment, the timber trellis panels constitute development within the meaning of s55 of the 1990 Act for which planning permission is required.
12. Article 3 and Schedule 2, Part 2, Class A of the GPDO¹ grant planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Paragraph A.1 of

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

Class A limits the height of such development to not exceeding 1m where it is adjacent to a highway used by vehicular traffic (paragraph A.1(a)(ii)) and up to 2m elsewhere (paragraph A.1(b)).

13. It does not appear to be a matter of dispute that the trellis fencing is about 1.7m high. The ground (c) appeal therefore turns on whether the trellis fence panels are 'adjacent' to the highway. If they are, then they cannot be permitted development and planning permission would be required. Alternatively, if they are not adjacent to a highway then a height up to 2m would be permitted without the need for express planning permission.
14. The meaning of the word 'adjacent' is not defined in the GPDO, or in the 1990 Act. A normal everyday dictionary definition is 'lying near, close or contiguous'. In past Orders where the word 'abutting' was used, the Courts² declined to rule that 'abutting' equated to touching. Even though 'abutting' has since been replaced by 'adjacent', in practice there is little difference in how both terms have been interpreted. The assessment of what constitutes 'adjacent' must therefore amount to a question of fact and degree.
15. The appellants contend that the panels do not front a highway and, as they are positioned on a side boundary and setback from the front boundary wall and pier, that they are not positioned adjacent to the highway.
16. Nevertheless, the side walls, in combination with the front wall and railings, fulfil the function of forming a boundary which physically defines and visually encloses the front garden. The side walls and the attached trellis fencing panels therefore have a perceived function of forming a single enclosure between the highway and the front of the appeal dwelling. Physically, the panels also run to the back of the pillars which are contiguous with the highway.
17. Therefore, as a matter of fact and degree and on the balance of probability, I find that the trellising panels are adjacent to the highway. As they exceed the 1m height limit at Class A paragraph A.1(a)(ii), they are not granted planning permission by the GPDO and in the absence of a grant of express planning permission, are in breach of planning control. The ground (c) appeal fails.

The Appeal on Ground (a)

Main Issue

18. The main issue is the effect of the development on the character and appearance of the area and the Parsons Green Conservation Area.

Reasons

19. The significance of the Conservation Area as a heritage asset is largely derived from its two substantial areas of public open space and its Victorian terraces, which remain substantially intact.
20. The appeal property is positioned towards the end of Tyrawley Road which is a short residential street with characteristic two-storey Victorian terrace dwellings on both sides of the road. There is a clear visual unity derived from the rhythm and consistency in the scale and design of the terraces, incorporating two storey bays, stucco detailing to the windows and doors and

² *Simmonds v SSE & Rochdale MBC* [1980] 40 P & CR 432

paired balconies above recessed doorways. The dwellings are laid out on a straight alignment parallel to the road, facing onto shallow front gardens.

21. The Parsons Green Conservation Area Character Profile highlights that within the Conservation Area there is a mix of boundary treatments with a variety of railings, low brick walls and hedges, or a combination of these. Tyrawley Road is largely reflective of that, displaying a clear consistency to the depth of the front gardens and the enclosures around them, including the low height of the side walls, returning to the front elevation of the dwellings. That arrangement provides a largely consistent and attractive setting to the front of the dwellings.
22. Trellis panels are not part of the mix of boundary treatments identified in the Character Profile and in this case are significantly higher than the walls to which they are attached. Their dark colour also contrasts with the white painted walls and, although the climbing plants do add greenery, the trellising remains clearly visible.
23. Whilst relatively lightweight, they retain sufficient visual presence to be clearly seen to protrude above the relatively low boundary walls, materially interrupting the rhythm of the enclosures to the street scene. Given their height and siting forward of a strong building line, the trellis panels are overly prominent and appear as incongruous and arbitrary features within the setting I have described, being more akin to a rear garden type enclosure.
24. The appellant has sought to refer me to other landscaping and front garden boundary treatments in Tyrawley Road and surrounding streets within the Conservation Area. However, trellis fencing is rare and is not a characteristic feature in the context in which the appeal site is viewed and experienced. In any case, the examples cited do not serve to justify the additional harm arising at the appeal site. The other examples of trees, shrubs and hedges are not direct or reasonable comparisons.
25. I recognise that the climbing plants provide some greenery, which the Character Profile recognises as important in softening the street space. However, the benefit derived is significantly outweighed by the manner of its provision in this case.
26. I therefore conclude that the development results in unacceptable harm to the character and appearance of the appeal property, the street scene and the Parsons Green Conservation Area, contrary to Hammersmith and Fulham Local Plan (LP) Policies DC1, DC4 and DC8 and Key Principles CAG3 and AH2 of the Hammersmith and Fulham Planning Guidance Supplementary Planning Document (SPD). Those state, amongst other things, that the council will conserve the significance of the Borough's historic environment by protecting, restoring and enhancing its heritage assets.
27. It follows that the development does not amount to good design that is sympathetic to local character and is therefore also contrary to paragraphs 126 and 130 of the National Planning Policy Framework (NPPF).
28. The Council's reference to SPD key principle CAC3 in its reason for issuing the enforcement notice appears to be a typo and should be CAG3, as listed in its delegated report. Even if I am wrong about that, conflict with the LP policies and other Key Principle remain.

29. The trellising leads to less than substantial harm to the Conservation Area taken as a whole. In such circumstances LP DC8 and the NPPF require that any identified harm is weighed against any public benefits the development might secure.
30. Whilst the trellising may partly contribute to screening front bin storage, it is not shown that the same could not be achieved by other less harmful means. Moreover, it was apparent that the trellis panels, while allowing some views through, serve to impair views of the main entrance of the appeal dwelling and neighbouring property, thereby diminishing the appreciation of the heritage asset.
31. I appreciate that the planting will absorb CO₂ but such gains are likely to be very modest. The appellant also raises the benefits of added greenery and a sense of wellbeing. However, the greening gains are achieved through the provision of harmful trellising. The benefits identified do not therefore outweigh or justify the harm arising or prevail over the great weight that should be given to the conservation of the heritage asset.

Other Matters

32. Although there may be marginal privacy gains to the occupants of the house, those, even in combination with the public benefits identified, are clearly outweighed by the above stated harm to the character and appearance of the area and Conservation Area, even putting to one side any reasonable privacy expectation for the front of the dwelling.
33. I note the appellants representation regarding the behaviour (as alleged) of their neighbour, but such issues are not matters for this appeal, which I have considered on the basis of the evidence before me and my own site visit.

Conclusion on Appeal A Ground (a)

34. For the reasons given above, and having had regard to all other matters raised, I conclude that Appeal A should fail on ground (a) and the deemed planning application should be dismissed.

The Appeals on Ground (f)

35. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or the injury to amenity caused by the breach.
36. The appellants argue that the steps required to remedy the alleged breach of planning control are unreasonable as planning permission ought to be granted. However, I have considered the same under ground (a) and have come to the opposite conclusion.
37. The appellants also contend that the existing side wall has a height of 1.25m above ground, *'so is itself beyond the 1 metre limit quoted by the Council in the Enforcement Notice. Therefore removal of the trellis could never return the side wall to a height of 1 metre as the existing brick wall is clearly of a date similar to the construction of the house and original to the property'*. On that basis it is argued that the breach could never be remedied by the removal of the trellising. However, the breach is the installation of the timber trellis panels, not the side walls.

38. The requirements rightly give the appellant the option of removing the trellising or to reduce its height to 1m in line with permitted development rights. That is consistent with an intention to remedy the injury to amenity. The requirements tally with alleged breach and are not excessive.

39. The appeal on ground (f) fails.

Richard S Jones

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/H5390/C/22/3302214	Ms Anne France Van De Put
Appeal B	APP/H5390/C/22/3302215	Mr Alessandro Manfredi