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# Appeal Decision

Site visit made on 9 August 2023

**by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP**

**an Inspector appointed by the Secretary of State**

**Decision date: 10<sup>th</sup> August 2023**

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**Appeal Ref: APP/N5090/C/23/3319463**

**Land at 56 Hendon Wood Lane, London NW7 4HR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Michael Kingsley against an enforcement notice issued by the Council of the London Borough of Barnet.
  - The enforcement notice, numbered ENF/0888/22, was issued on 17 February 2023.
  - The breach of planning control as alleged in the notice is without planning permission, the construction of front and side boundary walls with associated piers, shown in green on Drawing 01 attached to the notice.
  - The requirements of the notice are to: 1 Demolish the front and side boundary walls and associated piers. 2 Permanently remove all constituent materials resulting from the works in 1. above from the land.
  - The period for compliance with the requirements is 4 months.
  - The appeal 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 on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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## Decision

1. It is directed that the enforcement notice be varied by adding the following words to end of the sentence in 5.1: *"or reduce the height of the means of enclosure to comply with Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015."*
2. Subject to this variation, which is due to the appeal succeeding on ground (f), the appeal is otherwise dismissed and 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.

## Ground (c)

3. For success on this ground, I must be satisfied on the balance of probabilities that the matters alleged do not constitute a breach of planning control.
4. The means of enclosure, the front part of which is adjacent to a highway, has been measured and described by the Council:

*The development comprises a front and side boundary brick wall with associated brick piers. Together with the 11 pillars, the overall height of the wall varies from 1.95m - 2.5m in height across the entire boundary treatment. There is a recessed vehicular entrance. The sections of wall between the pillars vary in height between 1-1.3m high depending on where a measurement is taken (sloping ground levels).*

5. The development does not have express planning permission, and the above dimensions (which have not been disputed by the appellant in the appeal process) mean that neither does the development benefit from general permission afforded by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
6. Accordingly, I am not persuaded on the balance of probabilities that the allegation does not constitute a breach of planning control. Ground (c) fails.

### **Ground (a) and the deemed planning application**

#### *Main Issues*

7. The main issues are:

- i) Whether or not the development constitutes inappropriate development in the Green Belt;
- ii) The effect of the development on the openness of the Green Belt;
- iii) The effect of the development on the character and appearance of the site, streetscene and local area;
- iv) The effect of the development on highway safety;
- v) Would harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development?

#### *Reasons*

##### Inappropriate development/openness

8. Chapter 13 of the National Planning Policy Framework (the Framework) stresses that the Government attaches great importance to Green Belts.
9. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
10. The operational development represented by the boundary treatment can reasonably be described as an extensive mass of brickwork with tall piers (of substantial form) that encloses much of the frontage of the property as well as the front portion of the side boundary with a neighbouring property. As such it significantly reduces both the spatial and visual openness of the Green Belt land and constitutes inappropriate development within it.

##### Character and appearance

11. Notwithstanding some contrary local examples (which the Council indicates may not all be lawful), Hendon Wood Lane is largely characterised by properties with largely open driveways with (where front boundary treatments exist) very modest walls upon frontages with low height pillars and/or railings. The heavy, tall, bulky enclosing structure of the appeal development is strongly incongruous with this prevailing character<sup>1</sup> and as a result causes significant harm to the character and appearance of the site, streetscene and local area.

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<sup>1</sup> Even when taking into account neighbouring hoarding, and the large host building itself.

### Highway safety

12. Having observed the development on my site visit, and its relationship with the highway and the neighbouring property at 54 Hendon Wood Lane (No 54), I agree with the concerns of the occupier of the latter property that the tall piers/pillars serve to dangerously obstruct the view between vehicles exiting the driveway of No 54 and users of the highway. This finding is reinforced by the professional opinion of highway officers, to which I afford significant weight, that the height of the development needs to be no more than 1m to control the safety risk<sup>2</sup>. The development therefore poses unacceptable and significant harm to highway safety.

### *Other considerations*

13. I accept that there is a “fall-back” position available under the GPDO whereby a means of enclosure can lawfully be developed, within limitations, under Class A of Part 2 of Schedule 2. However, I afford that consideration limited weight given that the statutory limitations would necessarily entail a less tall and dominant structure adjacent to the highway.

### *Green belt/planning balance*

14. Paragraph 148 of the Framework indicates that in considering any planning application, substantial weight should be given to any harm to the Green Belt. Accordingly, as I have found harm to the Green Belt I apply substantial weight in respect to it. I have also found significant harm to highway safety, and to character and appearance.
15. Having considered all matters raised in support of the appeal development I conclude that, collectively, they do not clearly outweigh the totality of the harm I have identified. Accordingly, very special circumstances do not exist and the development is contrary to the guidance in the Framework, Policies D1, D3, D4, G2 and HC1 of The London Plan (2021), Policies CS NPPF, CS1, CS5 and CS7 of the Barnet Local Plan Core Strategy (2012) and Policies DM01, DM15 and DM17 of the Barnet Development Management Policies (2012) – as supported by the Council’s Residential Design Guidance Supplementary Planning Document (2012) - which together seek to protect the Green Belt, highway safety and character and appearance<sup>3</sup>.
16. The appeal development does not comply with the development plan as a whole, and there are no material considerations which outweigh that finding. Accordingly, I will not grant planning permission and the appeal under ground (a) does not succeed.

### **Ground (f)**

17. For an appeal to succeed under this ground, I must be satisfied that the requirements of the notice are excessive in achieving its purpose.
18. From the way the notice is drafted, it appears that its purpose is to remedy the breach of planning control.

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<sup>2</sup> When consulted on 22/4527/RCU, the refused part-retrospective planning application for development which is largely similar to the development targeted by the notice.

<sup>3</sup> I place very limited weight on the policies of the emerging Local Plan, due to the early stage of its preparation, and they do not affect my decision.

19. While the GPDO does not grant planning permission for any part of the unlawful development, due to the limitations of Class A being exceeded, it is appropriate in this case to vary the notice to give an option that the development is modified to within compliance with those limitations. Requiring complete removal of the development would be unlikely to achieve anything and therefore excessive, because the grant of general planning permission under the GPDO represents a realistic fallback position and is an obvious alternative that could be achieved with less cost and disruption.
20. I am therefore varying the notice accordingly. Ground (f) succeeds.

### **Conclusion**

21. For the reasons given above I conclude that the appeal should not succeed, save to the extent I have indicated under ground (f). I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

*Andrew Walker*

INSPECTOR