



Appeal Decisions

Site visit made on 16 August 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2023

Appeal A Ref: APP/H5390/C/23/3316527

Appeal B Ref: APP/H5390/C/23/3316528

59 Anselm Road, London SW6 1LH

- Appeals A and B are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mrs Victoria Bonaddio (Appeal A) and Mr Vincenzo Bonaddio (Appeal B) against an enforcement notice issued by the Council of the London Borough of Hammersmith and Fulham.
 - The notice was issued on 26 January 2023.
 - The breach of planning control as alleged in the notice is without planning permission, 1) the erection of front and side timber fences more than 1m in height at the front of the property 2) the erection of side and rear fences over 2m at the rear of the property.
 - The requirements of the notice are to: A. remove the timber fences located on the side and rear boundaries within the front and rear garden or A. reduce the height of the timber fences within the front garden to 1 metre as measured from ground level and reduce the height of timber fences within the rear garden to 2 meters as measured from ground level.
 - The period for compliance with the requirement is: within two (2) months of the date on which this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeals A and B – Formal Decisions

1. The appeals are dismissed, and the enforcement notice is upheld with the following corrections:
 - deleting the words 'and rear' from paragraph 2 of the notice.
 - deleting the words 'remove the timber fences located on the side and rear boundaries within the front and rear garden' from paragraph 4A. of the notice and substituting them for 'remove the timber fences located on the front and side boundaries within the front garden and the side boundaries within the rear garden'.
 - to delete 'A.' after 'or' in paragraph 4 of the notice and substitute it for 'B.'.
 - deleting the sentence at paragraph 4 and replacing that with 'reduce the height of the timber fences within the front garden to 1 metre as measured from ground level and reduce the height of timber fences within the rear garden with 57 and 61 Anselm Road to 2 meters as measured from ground level'.

Preliminary Matter

2. Given the evidence about the fences, I asked the main parties whether there was a hidden ground (d) on both appeals and sought their comments. I have taken these into account in reaching my decisions.

The Enforcement Notice

3. I have a duty to ensure that the enforcement notice is in order. Under s176(1) of the Act, as amended, it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms provided I am satisfied that the correction or variation will not cause any injustice.
4. The requirement in paragraph 4 refers to side and rear boundaries within the front and rear gardens. Whilst this is correct for the rear garden, there is no rear boundary in the front garden. Instead, the boundaries in the front garden should be to the front and side. Furthermore, the use of 'A' twice in paragraph 4 is not clear and should be amended for clarity.

The appeals on grounds (c) and (d)

5. To succeed on ground (c), the appellants need to show, on the balance of probability, that the fences subject of the appeals did not constitute a breach of planning control. The onus of proof here lies with the appellant. Ground (d) is that, at the date the notice was issued, no enforcement action could be taken in respect of any BPC which may be constituted by the matters.
6. S171B(1) provides that no enforcement action may be taken in respect of any unauthorised operational development after the end of the period of four years beginning with the date on which the operations were 'substantially completed'.
7. The appellants state that the boundary fences in place to the front and rear of the mid-terraced dwelling are at the same height now as they were when they purchased the property in 1983. According to the appellants, the fences next to the pedestrian footway and those to the flank boundaries with 57 and 61 Anselm Road were replaced in 2011 and 2018. That may be so, but photographic evidence from the Council indicates that new timber fences to the front of the property have been erected within the last four years.
8. Measurements taken on site and agreed between both parties confirm that the three fences to the front of the appeal property are between 1.24 metres and 1.81 metres high. Each of the fences have been reduced in height since the notice was issued based on submitted photographs, though I am unclear what the height of each fence was when they were erected. Regardless, the position of each boundary fence to the front of the appeal property is adjacent to the footpath, which comprises the highway. Although each flank boundary fence extends away from Anselm Road, they are, at their closest point, adjacent to the footpath.
9. Due to the position of the fences to the front of the appeal property, whether that be at the height they were when the notice was issued or that now in situ, they are higher than the metre permitted by Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the "GPDO"). As such, they require planning permission regardless of whether they are or are not visible when vegetation is in leaf.
10. At the rear, horizontal timber slats have been erected across the rear boundary. These abut the fence that has been in situ since 1983 according to the appellant. The timber slats extend from ground level up to the same height as the existing fence. Collectively, they form the same boundary. Given this, the rear boundary fence has been improved or altered, and as the timber slats do not extend above the height of the existing fence, the works carried are

permitted development by Class A, Part 2 of Schedule 2 of the GPDO. Thus, no breach of planning control has arisen in respect of this boundary.

11. The flank boundary fence to the rear garden of the appeal property and No 57 is around 2.49 metres high and the rear flank boundary fence with No 61 is approximately 2.44 metres high. Both fences comprise a close boarded fence with a top section of horizontal timber slats. The appellant says that the fence with No 57 was replaced in 2018, whilst the rear flank boundary with No 61 was replaced in 2014. There is, however, no substantive evidence to support the dates when the fences were erected, and the Council indicate that they received a report of the new fences in August 2020. Therefore, on the balance of probabilities, given the date when the Council received a report of the flank boundary fences, they have not been on the land for four years or more, and so are not immune from enforcement action.
12. As the GPDO does not grant retrospective planning permission, the works to form both rear flank boundary fences in place when the notice was issued would need to have been permitted by the GPDO in force when the development was begun. As both fences are over two metres above ground level, and although they replaced previous boundary treatments, they are not permitted development, and require planning permission.
13. The appeals on ground (c) succeed insofar as the rear boundary fence but fail in respect of each of the other boundary fences to the front and rear of the appeal property. The appeal on ground (d) does not succeed.

The appeals on ground (f)

14. The appeals under ground (f) are that the appellants consider 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, the notice seeks to remedy the breach.
15. Given my findings on ground (c), my consideration of the appeals on ground (f) concerns the front boundary fences and both flank boundary fences to the rear.
16. The appellants are willing to reduce the flank boundary fence with No 61 to the front of the appeal property to a metre high, and lower the flank boundary fences at the rear with Nos 57 and 61 to two metres high. This is, however, what the notice requires to remedy the breach of planning control. Hence, they are not an excessive remedial step. Although the remaining two fences at the front of the appeal property may be covered in greenery and offer support to those plants, I am not able to consider planning merits on this ground. Retaining the fences at their current height would not remedy the breach and there is no obvious alternative or lesser step that would remedy the breach. For these reasons, the appeals on ground (f) fail.

Conclusions

17. I have set out various corrections to the notice so that it is in order. Further corrections are necessary to the notice based on the appellants partial success on ground (c). However, for the reasons given above, the overall outcome is that I shall uphold the enforcement notice with corrections.

Andrew McGlone

INSPECTOR