



Appeal Decision

Site visit made on 15 August 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2023

Appeal Ref: APP/F5540/C/23/3314036

Land at 40 Oxford Road South, Chiswick W4 3DH

- 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 M Rahman against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice, numbered BWR/2022/00185, was issued on 8 December 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a boundary wall and the associated gates.
- The requirements of the notice are i Demolish the boundary wall and the associated gates; ii Remove all resultant debris from the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appeal is lodged on grounds which include (a) and (f). Section 173(3) of the Act says an enforcement notice shall specify steps in order to achieve wholly or partly, any of the purposes set out in Section 173(4). These include, remedying the breach by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land.
2. In the event that the deemed planning application is not successful for what has been built, the appellant has advanced, by way of an alternative as their ground (f) appeal, that they should be able to retain the side boundary walls to a height of 2 metres and the front boundary wall and gates to a height of 1 metre. They appear to argue that this would align with what could be achieved in accordance with permitted development rights within The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
3. This alternative proposal does not benefit from planning permission. Accordingly, in order to give proper consideration to it, I would need to deal with it under ground (a) and amongst other things consider whether this outcome could be achieved by granting planning permission "in relation to the whole or any part" of the matters alleged in the notice, either with or without conditions.

4. The notice confirms that the relevant boundary treatment is that which is "crosshatched in black on the attached plan". However, in the interests of clarity, I propose to correct the notice so as to duplicate this wording within the description of the breach of planning control. I am satisfied that this correction would not cause injustice to any of the parties.

The appeal on ground (a)

Main Issues

5. The ground (a) appeal is that planning permission should be granted for the alleged development. The main issues are the effect of the development on i) the character and appearance of the Wellesley Road Conservation Area (CA) and ii) highway and pedestrian safety.

Reasons

Character and Appearance

6. The appeal property comprises a large, twin gable fronted dwelling, three storeys in height including attic rooms, with projecting ground floor bay windows. It is within a predominantly residential location, where gable and bay window frontages are a common feature.
7. The houses along this street are generally set back from the road and have fully or partially enclosed front gardens. However, these enclosures, in various designs and materials, tend to be softened, or even 'lost' in some cases, due to the presence of established mature planting. This greenery is an important factor contributing to the character of the street scene and the wider CA.
8. The elevated route of the M4 road runs in an east-west direction, a short distance to the north of the appeal site. Oxford Road South culminates as a cul de sac at this point, as defined by a relatively tall and stark engineered brick wall, a feature which clearly detracts from the CA.
9. The front boundary enclosure targeted by the notice comprises a combination of wall and pillars, in a yellow coloured brick, with various entrance gates and panelling, solid in form and finished in black colouring, along the front elevation. Because of sloping ground the overall height of the structure along the front boundary varies, undisputed to be between some 2.2 metres and 2.7 metres.
10. Whilst the colour and texture of the brick, in itself, did not seem out of place, from my visit I was left in no doubt the boundary wall and gates appear exceptionally tall, particularly along the front elevation of the structure. It is a strident and heavily imposing feature, which appears to be designed primarily for security purposes, with little regard to its surroundings. I noted that the structure partially blocks visibility, and visually jars with and dominates the remainder, of the lower front elevation of the main building.
11. Whilst relatively tall frontal enclosures can be found nearby, they generally tend to be softened and recessive in appearance due to dense or mature garden planting. In any event none appear as domineering as the structure subject to the current appeal. Although, a tall timber boundary fence partially encloses the three-storey property opposite the site, this gives way to a low boundary wall along the site frontage.

12. The proximity of the elevated M4 carriageway does not serve to justify the height and dominance of the structure as a residential front boundary. Neither is the argument that the structure provides a clear distinction between public and private space compelling in this regard. Whilst the enclosure may promote safe vehicle parking and the personal security of residents, I am not persuaded that parking and security at this location is inherently unsafe, or that there are no less environmentally harmful ways to achieve this objective. The appellant says that the wall mitigates ambient background road noise for occupants of the property, however no evidence is provided to support this claim.
13. In accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a statutory duty under Section 72(1) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. For the reasons set out above, I conclude that the development causes less than substantial harm to the character and appearance of the street scene, to this part of the CA and would therefore fail to preserve the whole of the CA. However in terms of the guidance in the National Planning Policy Framework (the Framework), there would still be real and serious harm which is a consideration of great weight.
14. In such circumstances, where harm is identified to the significance of a designated heritage asset, in this case the CA, the Framework requires that this harm is weighed against the public benefits of the proposal. Whilst I acknowledge that the development might bring some benefits in terms of the security of the property, they would be private in nature, and a convincing case has not been made that there would be public benefits arising from the scheme sufficient to outweigh the harm I have identified.
15. For the aforementioned reasons the development would be in conflict with the Framework and also with Policies CC1, CC2, CC4 and SC7 of the Hounslow Local Plan 2015 (LP) insofar as they seek to promote high quality design that has regard to the character of its surroundings; conserve and where possible enhance heritage assets and reject poor quality design. It would also be in conflict with the Council's Residential Extension Guidelines 2017 insofar as they state that front boundary design should reflect the character of the area and allow for the character of properties in the street to be appreciated.

Highway Safety

16. The Council has raised the concern that the height of the structure serves to obscure visibility, therefore risking the safety of pedestrians and highway users. It has referred to a need to avoid obstructions over a height of 0.6 metres, and the provision of visibility splays at the site entrances of 2.4 metres by 2.4 metres¹.
17. I noted during my visit that the appeal site is close to the end of the cul de sac, such that the amount of traffic passing the site could reasonably be expected to be very small. Similarly, the footpath network is such that I am not persuaded significant numbers of pedestrians would choose to walk directly past the site entrances. I am also mindful that drivers are likely to leave the property with appropriate caution and that approaching pedestrians are likely to be aware of the possibility of a vehicle emerging from the site, because of an

¹ In accordance with the Council's Residential Crossovers and Off-Street Parking Policy (2016)

open gate and the sound of an engine running, and would therefore also proceed with appropriate caution.

18. In light of the above circumstances, I am not persuaded that any deficiency in the aforementioned standards, and therefore conflict with Policy EC2 of the LP, would be material in this case. I do not find conflict with Policy EC2 insofar as it seeks to avoid adverse impacts on the transport network. This however does not overcome the harm that I have found above.

The alternative proposal

19. The appellant has suggested, in the alternative, that they should be allowed to retain side walls to a height of 2 metres and the front wall and gates to a height of 1 metre. The appellant appears to argue that such development could be achieved under permitted development rights and says that it would be in keeping with a Court of Appeal ruling on the scope of ground (f) appeals².
20. Article 3, Schedule 2, Part 2, Class A of the GPDO states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure constitutes permitted development, subject to various conditions. Paragraph A.1. of Class A goes on to indicate that, with the exception of specific circumstances relating to schools, development is not permitted by Class A if the structure in question is erected or constructed adjacent to a highway used by vehicular traffic and would exceed a height of 1 metre above ground level. In any other case the height of the structure should not exceed 2 metres above ground level, in order to be permitted development.
21. The question then is whether 2-metre high side walls should be regarded as being 'adjacent' to a highway used by vehicular traffic. Case law has established that a wall does not need to be abutting a highway in order to be adjacent to it. The common dictionary definition of 'adjacent' refers to meaning close or near to something. A fact and degree assessment will therefore be necessary in each case, to determine whether a wall should be regarded as adjacent to a highway.
22. However, I have not been presented with a drawing setting out the detail of any such compromise design to enable me to reach a view as to whether the 2 metre high side walls should be regarded as adjacent to the highway, and therefore the extent to which they might be achievable by some future act of permitted development. Whether such a genuine fallback exists, and the weight to be ascribed to it, is therefore unclear.
23. Furthermore, even if regarded as 'part of the matters' targeted by the notice, it seems to me that front side boundary walls to a height of 2 metres, between gardens and driveways, are not readily apparent in the surrounding area and are not a defining characteristic of this part of the CA. On the basis of the limited information before me, I am not persuaded that the retention of side walls to a height of 2 metres, as far as the highway boundary, would result in a structure that was not physically obtrusive so as to be acceptable on design grounds. I conclude that such development would also fail to meet the tests

² *Ioannou v SSCLG & Enfield LBC* [2013] EWHC 3945 (Admin), [2014] EWCA Civ 1432

set out in paragraphs 13 and 14 above, and the policies referred to in paragraph 15.

24. Drawing all of the above considerations together the appeal on ground (a) does not succeed, both in relation to the development as built and in relation to the alternative proposal.

The appeal on ground (f)

25. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The appellant's appeal on this ground is that they should be allowed to retain the side walls to a height of 2 metres and the front wall and gates at a height of 1 metre. I have considered this matter above as part of the ground (a) appeal.
26. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173 (4) (a)) or to remedy injury to amenity (s173 (4) (b)). The Act sets out that the breach may be remedied by making the development comply with the terms of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
27. With regard to the unauthorised development, the objectives of the notice are to secure the removal of the wall and gates and therefore to restore the land to its condition before the breach took place. It follows that the purpose of the notice is to remedy the breach of planning control.
28. Given that the purpose of the notice is to remedy the breach of planning control, this can only therefore be achieved by the removal of the unauthorised development and consequently the restoration of the land to the condition it was in before the breach took place. To require this does not, therefore, exceed what is necessary and the appeal on this ground must fail.

The appeal on ground (g)

29. The appeal is that insufficient time is allowed to comply with the requirements of the notice. The appellant claims that 12 months is required in order to allow time for an amended proposal to be submitted to the Council for approval and if necessary appealed.
30. However, aside from the schemes that I have considered as part of this appeal, it is uncertain whether a further compromise proposal would be forthcoming from the appellant, and if so in what form.
31. This is not to say that the appellant is prevented from making any related planning or lawful development certificate application in the future. However, from the information before me, it seems that the 3 month timescale allowed by the Council for compliance with the notice would be proportionate when considering the impact of the development and that its removal would not be expected to be a technically complex procedure. Furthermore, it would not be expected to be necessary to vacate the property when carrying out the works. The ground (g) appeal fails.

Conclusion

32. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant

planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

33. It is directed that the notice is corrected by adding the following words after the description of the alleged breach of planning control in Section 3:

“, as denoted crosshatched in black on the attached plan.”

34. Subject to this correction 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.

R Merrett

INSPECTOR