



Appeal Decisions

Site visit made on 28 March 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th September 2023

Appeal A Ref: APP/E5900/C/22/3309953

Land at 44 Granby Street, London E2 6DR

Appeal B Ref: APP/E5900/C/22/3309954

Land at 48 Granby Street, London E2 6DR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mrs Amara Malik against an enforcement notice issued by London Borough of Tower Hamlets.
 - The notices were issued on 27 September 2022.
 - The breach of planning control as alleged in the notices is without planning permission, the erection of a wooden panelled fence exceeding 2 meters high, adjacent to the highway, as shown by a blue line/arrow in the attached photographs 2A and 2C in Appendix 2.
 - The requirements of the notices are to either:
 1. reduce the height of the fence panels, posts, and concrete bases, shown in the attached photograph 2C in Appendix 2 by a blue line/arrow, to a total height of no more than one metre above ground level; or
 2. remove the fence panels, posts, and concrete bases, shown in the attached photograph 2C in Appendix 2 by a blue line/arrow.
 3. make good any damage arising from compliance with steps 1 or 2 and remove all debris from the Premises.
 - The period for compliance with the requirements is: ONE (1) month from the date this notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 25 April 2023.

Appeals A and B – Formal Decisions

1. It is directed that the enforcement notices are varied by:
 - the deletion of the words "a blue line/arrow" in requirements 1 and 2 and replace with the wording "2 metres from the back of the footway."
2. Subject to the variations, the appeals are dismissed, and the enforcement notices are upheld.

Preliminary Matters

3. The enforcement notices, the subject of Appeals A and B relate to different properties, but they allege the same breach of planning control and stipulate the same requirements and compliance period. Given this, and as the grounds of appeal are the same, my findings relate to both Appeals A and B as they give rise to the same considerations.

The appeals on grounds (b) and (c)

4. An appeal under ground (b) is that the breach alleged had not occurred on the

date that the notice was issued, as a matter of fact. To succeed on ground (c), the appellant needs to show, on the balance of probability, that the fences subject of the appeals did not constitute a breach of planning control.

5. The notice in each appeal targets a section of the wooden panelled fence indicated by the blue line/arrow on photographs 2A and 2C within Appendix 2 of each notice. I have therefore considered the appeals solely in relation to the fencing targeted by the notices, but in doing so for ease I shall refer to them as 'fences' unless otherwise specified.
6. The fences are of a solid design with timber posts at intervals with a concrete base below. The fences form part of longer sections of fencing between the front elevation of a terraced row of residential properties and the back of the footway on the road. The height of each fence is consistent across their full lengths. There is no dispute that they were built within the four years prior to the notices being issued.
7. The appellant claims that the fences are permitted development (PD) as they do not exceed two metres in height and are not adjacent to the highway. On this basis, they say that planning permission is not required and that no breach of planning control has occurred. Therefore, the fences would need to accord with Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the "GPDO").
8. This class of the GPDO permits "the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure." Development is not, however, permitted by Class A if "(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1 metre above ground level"; and "(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level."
9. The appellant says that the fences replaced old fences. However, I do not have details of the previous fences before me, and it is not suggested that the previous fences were higher than the fences which have been erected.
10. Despite the appellant saying that the fences do not exceed two metres in height, they do not confirm their actual height even though the onus is on the appellant to demonstrate that this is the case. Hence, I have no reason to disagree with the Council who say that the fences are around 2.2 metres high from ground level. If correct, this would mean that, regardless of the dispute as to whether the fences are 'adjacent' to the highway, the height of the fences are higher than the two metres permitted by Class A, Part 2 of Schedule 2 of the GPDO. They would not be PD.
11. In this particular instance, even if the fences stand to a height of no more than two metres, the Council consider that the fences are 'adjacent' to the highway, given that they abut the footpath which, together with the carriageway, comprise the highway.

The term 'adjacent' is not defined by the Act or in the GPDO. The appellant submits that the natural and ordinary meaning of word 'adjacent' is 'end-to-end' or 'together'. The Cambridge Dictionary states that the meaning of 'adjacent' is 'very near, next to, or touching'. However, the courts have established that the word 'adjacent' does not necessarily mean that the fence

has to be abutting or touching the highway. In the case of *Simmonds v SSE and Rochdale MDC [1981]* it was held that a fence higher than one metre and less than one metre from a footway to a highway did abut the highway. It is therefore a matter of fact and degree based on the specifics of the case.

12. Both fences extend up to the pedestrian footway on Granby Street, which is also used by vehicles. Due to their positioning, I find that both fences here are adjacent to the highway.
13. The notices require the appellant to either reduce the height of the fence panels, posts and concrete bases for the length identified by the blue line/arrow on photograph 2C in Appendix 2; or remove them. The line/arrow in respect of Appeal A starts at the post next to the footway and terminates at the end of the second panel at a post. The line/arrow in respect of Appeal B starts at the back of the footway but terminates in the middle of the second panel.
14. Photograph 2C in respect of Appeal B does not precisely set out the length of fence that must be reduced in height or removed. As such, it does not fairly tell the recipient what they are required to do to remedy the breach. Photograph 2C is more specific in respect of Appeal A, but a measurement would be more precise and provide greater certainty instead of a photograph.
15. I have a duty to ensure that the enforcement notice is in order, and it is also open to me, under s176(1) of the Act, 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. Therefore, it would be appropriate to vary the requirements of both notices in this manner and apply it to the requirements to reduce the height of the fence or remove it.
16. The appellant disagrees with the Council's suggestion that the point at which the fence could rise from a metre high to two metres high is around two metres from the back of the footway, but I consider it to be a reasonable approach due to the proximity of the fences to the highway, and my findings about them being adjacent to it. I will therefore vary the requirements of both notices to this effect to ensure consistency.
17. I acknowledge that the appellant sought advice about the fence, but I have considered the merits of both appeals based on the evidence submitted and the fact that the fences that have been erected. On this basis, the fences are development that required planning permission at the time when the enforcement notices were served as they were not PD. As such, the appeals on grounds (b) and (c) fail, but I will vary the notices for the reasons explained.

Other Matter

18. Although points are made by interested parties about the fences blocking views from the driveway of other road users, and their appearance, as the appeals have been made under grounds (b) and (c), in the absence of any ground (a) appeal which would effectively allow me to consider the impacts of the development I am unable to take this matter into account.

Conclusions

19. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Andrew McGlone

INSPECTOR