



Appeal Decisions

Site visit made on 3 October 2023

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

an Inspector appointed by the Secretary of State

Decision date: 7th November 2023

Appeal A: Ref APP/R5510/C/22/3308999

Appeal B: Ref APP/R5510/C/22/3309001

33 Dawlish Drive, Ruislip HA4 9SF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Lucas Buxton and Appeal B is made by Mrs Alexia Demetriou against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice, numbered HS/ENF/020845, was issued on 6 September 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of raised patio and timber boundary fence comprising close boarded panels and a trellis top.
- The requirements of the notice are to:
 - (i) Demolish and remove the raised patio shown in the approximate position outlined in blue on the plan attached to the notice;
 - (ii) Demolish and remove the timber boundary fence comprising close boarded panels and a trellis top shown in the approximate position marked in green on the plan attached to the notice; and
 - (iii) Remove from the land all debris, items, building materials resulting from compliance with points (i) and (ii) above.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) (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.
- Appeal B is proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.

Decisions

1. It is directed that the enforcement notice be varied by adding the following to the end of section 5:

"OR (iv) Carry out works to the raised patio and timber boundary fence so that they comply with the conditions and limitations of Part 1, Class E and Part 2, Class A respectively of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Remove from the land all debris, items and building materials resulting from the works."
2. Subject to this variation, which is due to Appeals A and B succeeding on ground (f), Appeal A is otherwise dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal A; ground (a) and the deemed planning application (DPA)

Procedural Matter

3. On my site visit, I saw that the trellis top of the fence (but not the associated posts) had been removed from the southern boundary with No 31 Dawlish Drive (No 31). The trellis remained on the northern boundary with No 35 Dawlish Drive (No 35). For the avoidance of doubt, the DPA under consideration is for the development that was in place and targeted by the notice when it was issued on 6 September 2022.

Main Issues

4. The main issues in the DPA are:
 - the effect of the fence development on the living conditions of neighbours at Nos 31 and 35, particularly as regards outlook; and
 - the effect of the patio development on the living conditions of neighbours at No 31, particularly as regards overlooking.

Reasons

Outlook; Overlooking

5. The development attacked by the notice comprises a raised patio to the rear of the property and a timber boundary fence that has been erected around its rear garden.
6. The patio area has a depth of 3m, spans the full width of the rear elevation of the property and has a maximum height of 0.4m when measured from the ground level.
7. For the most part, the boundary treatment has a height of 2.25m (0.15m gravel board, 1.5m close boarded panels, 0.6m trellis) staggered in sections from east to west due to the sloped topography of the site. However, when in association with the raised patio the fence has an effective height of 2.5m¹. This amounts to an inappropriately tall structure spanning the length of each neighbour's garden², with a particular impact where it is most elevated nearest the dwellings. It would create an oppressive, overbearing effect as experienced by the occupiers of no 31 from the rear of their home and when using their main outdoor amenity and patio area immediately to its rear, notwithstanding the existence of the appeal property's rear extension. Similarly, an unacceptable enclosing effect would be caused to the occupiers of No 35 which would significantly harm the amenity of the rear of their property (notwithstanding rear outbuildings and a raised patio adjacent to, albeit lower than, the appeal patio).
8. Therefore, significant harm would be caused to the living conditions of both sets of neighbours as regards outlook, which would not be the case where the fence less high (such as one erected within the limitations and conditions of Part 2, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO)).

¹ Plan submitted by the appellant (Ref: A & L)

² Well demonstrated in photographs provided by the occupiers of No 31, as regards their side of the development.

9. While the boundary treatment is tall, the effect of the height of the raised patio means that a person standing upon it of common height would be able to see through the trellis with a close and direct view of No 31's rear fenestration and main outdoor amenity and patio area. This would constitute significant harm to the living conditions of the occupiers of No 31 through overlooking, which would not be the case were the patio less elevated (such as one built in accordance with the conditions and limitations of Part 1, Class E of Schedule 2 of the GPDO).
10. I am not satisfied that the planter box mooted by the appellant, by way of a suggested condition which might be attached to planning permission, would make the development acceptable as - even were the feature able to satisfactorily reduce the level of overlooking through the trellis composing the higher section of the fence - it would not satisfactorily address the harm that the development causes to outlook (largely through the height of the fence along its length as experienced by the neighbours).
11. The appellant has raised a planning permission granted by the Council for a raised patio and fencing to rear of another property³. However, although I have not been provided with a copy of the application or of the officer report assessing the development, that scheme appears materially dissimilar to the appeal scheme as the fence does not extend the length of the neighbouring gardens but rather it finishes as the patio steps down to the garden⁴. In any respect, the existence of that permission does not ameliorate the harm I have identified in the appeal before me which I have determined as I must on its own particular merits.
12. For all of the above reasons, the appeal development causes significant harm to the living conditions of neighbours. As such it is in conflict with Policies DMHD 1 and DMHB 11 of the London Borough of Hillingdon Local Plan Part 2 – Development Management Policies (2020) which together seek to ensure developments are well-designed and protect living conditions. For the same reasons, it is in conflict with the design principles of the National Planning Policy Framework.

Conclusion on Appeal A; ground (a) and the DPA

13. The development does not accord with the development plan as a whole, and there are no other considerations which outweigh that finding. Accordingly, I will not grant planning permission and ground (a) does not succeed.

Appeals A and B; ground (f)

14. For an appeal to succeed under this ground, I must be satisfied that the requirements of the notice are excessive in achieving its purpose.
15. From the way the notice is drafted, it appears that its purpose is to remedy the breach of planning control.
16. While the GPDO does not grant planning permission for any part of the unlawful development, due to the limitations of permitted development 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.

³ 78 Manor Way, Ruislip HA4 8HL (Ref 36051/APP/2021/1364 approved on 5 August 2021)

⁴ Drawing No. 4552101

17. Requiring complete demolition and 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.

18. I am therefore varying the notice accordingly. Ground (f) succeeds.

Conclusion

19. For the reasons given above I conclude that the appeals 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