



Appeal Decision

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 Ref: APP/R5510/C/22/3312618

9 Wilder Close, Ruislip HA4 9LU

- 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 Achunike Nnaemeka Ejikeme against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice, numbered HS/ENF/020962, was issued on 1 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a front boundary fence.
 - The requirements of the notice are to:
 - (i) Demolish and remove the front boundary fence (as shown in approximate position dotted blue on the plan attached to the notice)
 - (ii) Remove from the land all debris, items, building materials resulting from compliance with points (i) above.
 - 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) (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) is 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. The appeal is 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.

Ground (a) and the deemed planning application (DPA)

Main Issues

2. The main issues are the effect of the development upon:
 - the character and appearance of the streetscene and surrounding area;
 - highway safety; and
 - the health of trees of special amenity value.

Reasons

Character and appearance

3. The appeal property is a two-storey house located on a prominent corner plot formed from the intersection of Southbourne Gardens and an access road serving the rear of properties on Dawlish Drive. The 1.8m-high¹ close boarded fence targeted by the notice encloses three sides of the formerly open

¹ According to parts of the appellant's appeal statement (the Council gives the height at 1.9m).

vegetated area of the plot at this corner. Its longest aspect fronts Southbourne Gardens close to the footway for some distance, separated from it by only a small grass verge. It is therefore highly visible on the streetscene, and jarringly incongruous to the viewer within the context of the open and largely verdant spaces formed at road junctions nearby which contribute significantly to local character². This is particularly so given the resultant discord in this regard with the open vegetated corner settings of other properties at the neighbouring junction of Southbourne Road and Mansfield Avenue, including Nos 10 and 11 Wilder Close which correspond broadly symmetrically to the appeal property in the design of the estate. Accordingly, the appeal development causes significant harm to the character and appearance of the streetscene and surrounding area.

4. The appellant refers to the "low level part of the fence (1m height)" but this is a separate boundary treatment not targeted by the notice. Its existence and effect does not ameliorate the harm caused by the adjacent appeal development. Nor does the sight of tree canopies above the 1.8m-high fence make the enclosing boundary treatment acceptable in the context I have described. Further, while the close boarded fence will no doubt weather with age, there would still be unacceptable harm due to its obviously discordant enclosing effects upon the land.
5. For these reasons, the appeal development is in conflict with Policy BE1 of the Hillingdon Local Plan: Part 1 Strategic Policies (2012) (LP1), Policies DMHB 11, DMHB 12 and DMHB 14 of the Hillingdon Local Plan: Part 2 Development Management Policies (2020) (LP2) and Policies D3 and D8 of the London Plan (2021) (LONP) which together seek to protect character and appearance.

Highway safety

6. Due to the height and close proximity of the fence with the junction of Southbourne Gardens and the access road, I saw on my site visit that a motorist exiting the access road (whatever the speed possible along the access road itself) would have very limited visibility of pedestrians using the footpath on Southbourne Gardens until their vehicle was in effect upon the footpath. This creates an unsafe situation for pedestrians. This is also the view of the Council's professional Highway Officer, to which I afford significant weight, and who refers to conflict with the Council's Domestic Vehicle Footway Policy (CDVFP). That Policy requires that where a driveway intersects with a footway, an area 2.4m back and 2.4m either side is kept clear of fences, walls and shrubs etc over 0.6m in height. The development clearly does not comply with these requirements. While the appellant's statement refers to a note from his own instructed highways engineer, that note was not in fact submitted.
7. For these reasons, the appeal development is in conflict with Policy DMT 2 of the LP2 and Policy T4 of LONP which together seek to protect highway safety. For the same reasons, the development is in conflict with the highway safety requirements of the National Planning Policy Framework.

Trees

8. I saw on my site visit that the fence runs very close to the trunk of at least one tree to which a Tree Protection Order (TPO) applies³. The trees are mature

² Notwithstanding examples of varying property boundary treatments.

³ TPO 511

trees of special amenity value associated with the land which had been part of the former Bourne County Secondary School. Therefore, it is likely that the development will be situated over the roots of a protected tree. While the appellant says that there are no foundations or significant soil disturbance associated with the development, it seems to me that a relatively significant boundary treatment is now impacting to some degree upon the ground below which protected roots are likely to exist. Without further supporting information from the appellant, it is not possible to determine the extent of that impact upon the long-term health of trees of special amenity value.

9. Accordingly, the development is in conflict with Policy DMHB 14 of the LP2 which seeks to protect trees.

Other Matters

10. The fence provides privacy and security, and I read (including within third-party submissions) that there have been historic issues with fly-tipping upon the land and other forms of anti-social behaviour. I accept that the development therefore produces benefits in reducing these problems. The degree of benefit obtained however does not outweigh the harm the development otherwise causes.

Conclusion on ground (a) and the DPA

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

Ground (f)

12. For an appeal to succeed on this ground, I must be satisfied that the requirements of the notice are excessive in achieving its purpose.
13. It is clear from the way the notice is drafted that its purpose is to remedy the breach of planning control by restoring the land to its condition before the breach. That is not excessive.
14. Even were the purpose of the notice to remedy injury to amenity, the appellant has not provided details of any lesser steps that would achieve that purpose – other than as regards the highway safety issue. And on that matter, the appellant has not submitted the mentioned note from his instructed Highway Engineer upon which he predicates his proposal for a lesser set-back for visibility purposes at the junction than as stipulated by the CDVFP. Clearly, on such an important matter I cannot vary the notice to incorporate lesser steps without consideration of necessary supporting evidence.
15. Ground (f) therefore does not succeed.

Ground (g)

16. For success under this ground, I must be satisfied that the time given for compliance with the notice requirements (3 months) is unreasonably short.
17. The appellant says that 6 months is required for discussions with the Council about an alternative boundary treatment.

18. However, I see no good reason why the very straight-forward requirements of the notice cannot be reasonably achieved within 3 months.

19. Accordingly, ground (g) does not succeed.

Conclusion

20. For the reasons given above I conclude that the appeal should not succeed.

I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Andrew Walker

INSPECTOR