



Appeal Decision

Site visit made on 6 November 2023

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2023

Appeal Ref: APP/W1905/C/22/3294924

279 Perrysfield Road, Cheshunt, WALTHAM CROSS, EN8 0TP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Denise Boyden against an enforcement notice issued by Broxbourne Borough Council.
- The notice, numbered ENF/22/0011, was issued on 16 February 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a wooden boundary fence, in the approximate position marked in blue on the attached Plan 2 in order to enclose open amenity land into the residential garden of 279 Perrysfield Road.
- The requirements of the notice are: (i) cease the use of the land as part of the private garden of 279 Perryfield Road; (ii) reinstate the previous boundary line between the garden of 279 Perrysfield Road and the amenity land in accordance with the Town and Country Planning General Permitted Development Order (as amended) Schedule 2, Part 2, Class A; (iii) remove the wall and gates, including any posts or supports, from the position marked blue on Plan 2; (iv) remove any resultant debris from the land.
- The periods for compliance with the requirements are: 1 week for step (i), 4 weeks for step (ii), 8 weeks for step (iii) and 10 weeks for step (iv).
- The appeal is proceeding on the grounds set out in sections 174(2)(a), (f) & (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations.

Decision

1. It is directed that the enforcement notice is corrected by:- replacing step 5(iii) with "Remove the wooden boundary fence, including any posts or supports, from the position marked blue on Plan 2."

and varied by:- (a) deleting from step (ii) "in accordance with the Town and Country Planning General Permitted Development Order 2015 (as amended) Schedule 2. Part 2. Class A."; and (b) substituting a single time for compliance of "four calendar months from the date this notice takes effect." for all four steps.

Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. Step 5(ii) appears to include unnecessary reference to what, in any event, should have been cited as The Town and Country Planning (General Permitted Development) (England) Order 2015. The notice only needs to require the reinstatement of the previous boundary line. It is a matter for the appellant to decide what boundary treatment, if any, to install, subject to it's not requiring planning permission. I shall vary step 5(ii) accordingly.

3. Although the allegation correctly refers to “a wooden boundary fence”, step 5(iii) requires the removal of “the wall and gates”. There appears to be no confusion about the wooden fence being the subject of the notice and I feel able to correct step 5(iii) without any injustice to the appellant.

The appeal on ground (a) and the deemed application

4. The main issue is the impact of the use of the area of amenity land as residential garden, and the erection of the wooden boundary fence, on the character and appearance of the area.
5. The appeal property is a modern end terraced house in an estate which contains a number of footpath links, with adjoining areas of amenity land, most of which area grassed and/or planted with trees and shrubs. In a November 2011 appeal decision (ref: APP/W1905/C/11/2158515), the Inspector noted that the appellant had acquired a strip of amenity land at the side of the house and had enclosed it with a close boarded fence of the order of 2m high. Although the appeal was dismissed, it was indicated that this enclosure was not out of keeping with the overall appearance of the area. In particular, it was noted that a grassed amenity area remained to the side of the property, beyond the area which had been fenced. The Inspector’s main objection was to the enclosure of land to the front, rather than to the side, of the house and I understand this initial enclosed side extension to the garden was allowed to remain.
6. In the past four years, the appellant has occupied as private garden an additional area, approximately 4m wide, to the side of the already enlarged garden and has extended the enclosing close boarded fence such that it now abuts the adjacent footpath. A tree that was on the amenity land is now behind the fence.
7. Policy DSC1 of the Broxbourne Local Plan requires development to enhance local character, taking account of existing patterns of development, including landscaping. Policy ORC3 indicates a presumption against the loss of amenity spaces unless they no longer provide an amenity or visual break. To my mind, both the loss of amenity land, adjacent to what appears to be a well-used footpath link within the estate, and the visual intrusion of the hard timber fencing so close to the footpath, significantly detract from the established soft landscaped character of this part of the estate, contrary to the aims of the development plan.
8. The appellant has pointed to other examples of similar timber fencing on the estate. However, I saw none with a comparable impact on amenity land to that of the appeal site.
9. The Council doubts that the appellant has the right to use what is stated to be highway land. However, I have no clear evidence on this issue and it appears to me to be a matter for the highway authority to pursue if its interests have been affected.
10. In conclusion, I find that the development unduly harms the character and appearance of the area, contrary to the aims of the development plan. Accordingly, the appeal on ground (a) is dismissed.

The appeal on ground (f)

11. The appellant submits that the Council's main concern is the boundary fence, rather than the use of the land, indicating that the use should be allowed, even if the extended fence is not. However, that is not my understanding of the Council's case and the appellant's suggestion would not prevent the loss of amenity space designed to enhance the footpath network. The appeal on ground (f) fails.

The appeal on ground (g)

12. The appellant submits that six months is needed to complete the work as she is unable to carry out the work herself and would need to engage a building contractor. Given the chance of adverse weather conditions in the impending winter period in which this decision is issued and the need to find and hire a contractor, I agree that the period should be extended but consider 4 months to be adequate to carry out the work. It makes sense for the time for compliance to be a single time for all four steps. To this extent, the appeal on ground (g) succeeds and I shall vary the notice accordingly.

B S Rogers

INSPECTOR