
Appeal Decision

Site visit made on 5 December 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th December 2023

Appeal Ref: APP/H5390/C/23/3315113

58 Black Lion Lane, London W6 9BE

- 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 Ms Patricia Wyndham against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham ('the Notice').
 - The enforcement notice, numbered 2021/00963/BOUND, was issued on 28 November 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a trellis in the rear garden on the eastern boundary.
 - The requirements of the notice is Reduce the height of the trellis located in the rear garden on the eastern boundary from 6 wooden squares in height (1.25M) to 3 wooden squares (0.62M) along its entire length.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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.

Reasons

Ground (a)

2. An appeal made under Ground (a) is that planning permission ought to be granted for the development that is the subject of the Notice.
3. The main issues are the effect of the development on: the character and appearance of the St Peter's Square Conservation Area ('the SPSCA'); and the living conditions of the occupants of 58 Black Lion Lane, having particular regard to privacy, and those of the occupants of 22-24 St Peter's Grove, having particular regard to outlook and sunlight.

Character and Appearance

4. 58 Black Lion Lane ('No 58') is a two-storey mid-terraced house with a medium sized rear garden enclosed by brick walls. It, and the other dwellings in the terrace are Grade II listed. Whilst I saw that some of the dwellings in the terrace had been altered at their rears, they have pleasant and balanced front elevations. The terrace lies within the SPSCA.

5. Both No 58, as well as the other dwellings in the terrace, and the SPSCA are designated heritage assets. In respect of the listed buildings, I have a statutory duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) act 1990 to "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses". Under section 72(1) of that Act, I also have a statutory duty to pay "special attention...to the desirability of preserving or enhancing the character or appearance" of the conservation area.
6. The entry on the statutory list for the terrace states that the St Peters Estate, of which the terrace is an integral part, was developed from 1811. The SPSCA, which encompasses that estate, lies between the Great West Road, to the south, and King Street, to the north. It is a planned development that is based on St Peters Church on the Great West Road, and a public park. The area is overwhelmingly residential in character, with properties for the most part set in terraces. The built form ranges from very large multiple storeyed properties close to the park and church to more modest two-storey properties further away. There are also, near to the church, blocks of post-war low-rise flats and a primary school. For its most part, it has the appearance of a planned townscape.
7. A copy of the Council's 1997 document, 'Conservation Area Character Profile – St Peters Square', was submitted as part of the comments made by third parties that live at 22-24 St Peters Grove ('No 22-24'). That property lies behind No 58. The Appellant and Council had an opportunity to comment on this but did not. As it describes the built development in the SPSCA and the character and appearance of, amongst others, Black Lion Lane, it is relevant to my deliberations. It describes the latter as having "strong blocks of terraces" and "the grouping here retains its original character largely unimpaired". Even if the Character Profile is no longer adopted guidance, from what I saw at my site visit those descriptions still hold true.
8. The development that is the subject of the Notice is the erection of a timber fence in front of the rear garden wall at No 58, which lies between it and No 22-24, on top of which is a timber trellis. The evidence shows that the overall height of this is 3.95m, with the trellis providing 1.25m of this. The Appellant has grown a climbing flowering plant from the rear garden that has reached the trellis, from where it has bushed outwards.
9. The trellis has been erected in response to a development that has been undertaken at No 22-24. Extensions and alterations to this property were granted planning permission by the Council, subject to conditions. Of these, one required the submission of details and samples of translucent glass to be installed at first floor level. Given the urban setting and the proximity of dwellings in the area, a degree of overlooking is to be expected by the area's residents; however, No 22-24 is set quite close to the boundary with properties in Black Lion Lane and I could see why the Council found it necessary to apply the condition to protect the privacy of properties there.
10. When discharging the condition, the Council approved the use of clear glass. This led to complaints to the Council and the Local Government and Social Care Ombudsman ('the Ombudsman'). Both were upheld, with both the Council and the Ombudsman agreeing that the Appellant's privacy had been adversely affected. The trellis is the Appellant's response to the overlooking that has

resulted. In their decision¹, the Ombudsman stated that “The overlooking and loss of privacy is currently mitigated by the tall trellis which has been erected. This trellis is unauthorised, and should the Council require it to be removed I consider an alternative form of screening to protect Mrs Y’s [the Appellant] privacy would be appropriate²”. It goes on to say, “The Council has agreed to liaise with Mrs Y to agree a form of screening to mitigate the overlooking to her garden and conservatory³”.

11. I note that the owners of No 22-24 question the manner in which the Ombudsman reached that decision. However, as they quite correctly say, that matter is nonetheless settled and it has to be a material consideration in my decision.
12. I saw that the large ‘offending’ window at No 22-24 was not directly to the rear of No 58, but appeared to be more to the rear of 56 Black Lion Lane (‘No 56’). It was, however, clearly seen from the rear of No 58. By reason of the trellis and its associated planting, views to the window are obscured from a large part of the garden at No 58.
13. I was not asked to visit No 22-24 and, therefore, could only make my assessment from No 58, including from bedrooms at first floor level. From those higher vantage points I could see into the room served by the window, to a degree. I was, however, provided with a written description of its interior in the submission of the owners of No 22-24. This says that the area behind the window is a lobby and not a “main room”. Notwithstanding this, I am told that it is used occasionally as a sitting area and study. Given its position and its uses, people in that part of No 22-24 would be able to look out to the rear of No 58.
14. Although it was largely subsumed by growth when I visited, I was able to see the form of the trellis. It is shown in Photograph B, appended to the Appellant’s Grounds of Appeal before the planting had grown to the extent that I saw. I did not see any other similar trellis or fencing at my site visit, nor in my walk around the area, nor was my attention drawn to any. As it extends well beyond the top of the garden’s brick wall, it forms a prominent and incongruous feature that detracts from the character and appearance of the SPSCA. This effect is relatively localised, but it would be clearly visible from the rears of properties in Black Lion Lane and St Peters Grove. It is not widely experienced from the public domain, but I could see a small part of it from Black Lion Lane through the gap between No 58 and 60 Black Lion Lane.
15. No 58 and the other listed buildings undoubtedly have great significance. It is without question that the fence and trellis has been erected within their settings. However, I agree with the Council that despite its proximity, it does not have an adverse effect on those settings.
16. For the above reasons, while it causes no harm to the setting of the listed terrace I find that the development fails the statutory test to preserve the character and appearance of the SPSCA in which it is sited. It is also contrary to the terms of Policy DC8 of the Hammersmith and Fulham Local Plan February 2018, (‘LP’) and Key Principles CAG2 and CAG3 of the Council’s

¹ Letter dated 22 April 2022

² Ibid paragraph 40

³ Ibid paragraph 41

Planning Guidance Supplementary Planning Document - February 2018 ('SPD') that reflect the statutory test. It is not high quality development that creates a high quality urban environment or is compatible with the scale of the existing development and is, therefore, contrary to the terms of LP Policies DC1 and DC4.

17. The Notice states that the development is also contrary to the terms of SPD Key Principles AH1 and AH2. As these set out what is required of applicants when submitting an application and how the Council will process applications, rather than setting out requirements that developments should accord with, I find that this is not the case.

Living conditions

18. The evidence before me shows that the garden area to No 22-24 is small, measuring 4m x 3.5m. Although I did not enter that property, I could see from the first-floor windows of No 58 that the garden to No 22-24 would be small. As the figures put forward have not been challenged, I take them to be the case.
19. Given this, adding to the height of the wall between the two properties, which already affects the outlook from No 22-24, would have an adverse effect on the living conditions of its occupants. This is illustrated, both through photographs and a written description in the comments they have made on the appeal that I can readily understand.
20. The photographs show the enclosed nature of the rear garden. This feeling of enclosure would have been quite marked prior to the erection of the trellis, but, notwithstanding the design of the trellis, this will have been exacerbated since that occurred. It results in an overbearing development that has a significant effect on the outlook from the property. Its owners say that this affects sunlight reaching the rear of the property and, given that it is immediately to the west of the rear of No 22-24, I am sure that this is the case – especially with the addition of the planting.
21. Whilst I sympathise with the Appellant's position regarding the effect of the clear glazing, and taking into account the findings of the Council and Ombudsman in respect of her upheld complaints, this does not justify the retention of the trellis in its current form. The reduced height required by the Notice, allied to the planting that has been undertaken would reduce the loss of privacy to acceptable levels in this urban setting. Although the perception of overlooking would remain, and perhaps be slightly exacerbated, I find that this does not provide sufficient reasoning to allow the retention of the trellis as it has been built.
22. The trellis that has been erected causes significant harm to the living conditions of the occupants of 22-24 St Peters Grove, being an overbearing feature that adversely affects the outlook from that property. The reasoning behind its erection is understood, and I sympathise that, through no fault of her own, the Appellant felt compelled to erect it to protect her privacy. This would be protected under the terms of the Notice. Given its proximity, height and that it is located to the west of No 22-24, I also find that it reduces sunlight reaching the rear of that property to the further detriment of its occupants' living conditions. It is therefore contrary to the terms of LP Policy DC4 that requires all alterations and building developments to be of a high standard of design

and, in particular, its criterion h. that requires that “good neighbourliness in particular the amenities of the neighbouring properties, and other properties most directly affected by the proposal” is demonstrated. It is also contrary to the terms of Policy HO11 and Key principle HS6 of the SPD that that include similar provisions.

Other Matters

23. Whilst I sympathise with the Appellant’s position, it is not unreasonable and perverse of the Council to take the action it has. Although it is suggested that enforcement action should be taken against the owners of No 22-24, it is unclear what this means and is, in any event, immaterial to the appeal that is before me.

24. For the above reasons, the Ground (a) appeal is dismissed.

Ground (g)

25. An appeal under Ground (g) is that the time given for compliance with the requirements of the Notice is too short. The Appellant says that the work programme of the fencing contractor is usually booked for several months in advance, and it might not be possible to get the work done within 2 months. She requests 4 months.

26. No evidence to show the contractor’s likely availability has been provided. Furthermore, it has not been demonstrated that the work has to be carried out by that contractor. Whilst it has to be carried out at height, it is not specialist work. As such, I find that 2 months is sufficient time for the work to be undertaken. In this regard, I am aware of the harm to the living conditions of the occupants of No 22-24 that is on-going. In reaching this decision, I am aware that the Council has powers under section 173A(1)(b) to vary the terms of the Notice.

Conclusion

27. Whilst I can understand the reason behind the erection of the fence and its trellis work, this causes demonstrable and significant harm to the character and appearance of the SPSCA and the living conditions of the occupants of No 22-24.

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

Roy Curnow

Inspector