



Appeal Decisions

Site visit made on 7 August 2023

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th January 2024

Appeal A Ref: APP/M5450/C/22/3300317

Appeal B Ref: APP/M5450/C/22/3300318

13 Canons Drive, Edgware HA8 7RB

- The appeals are made under section 174 of the Town and Country Planning Act 1990, as amended.
- The appeals are made by Mr Edwin Solomon and Mrs Joy Solomon against an enforcement notice issued by the Council of the London Borough of Harrow.
- The notice was issued on 9 May 2022.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised demolition of a front boundary wall to the land in a conservation area ("the Unauthorised Works").
- The requirements of the notice are to:
 1. Rebuild the pre-existing boundary wall.
 2. Ensure that all materials used shall match those used in the construction of the pre-existing boundary wall.
 3. Remove from the land all materials and debris arising from compliance with the aforementioned requirements of the notice.
- The period for compliance with the requirements is six (6) calendar months after the notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(a) (Appeal A), (f), and (g) of the Town and Country Planning Act 1990, as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary decision: The appeals are dismissed and the enforcement notice is upheld in the terms set out below in the formal Decision.

Decision

1. The appeals are 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.

Applications for costs

2. An application for costs was made by Mr Edwin Solomon against the Council of the London Borough of Harrow. This application is the subject of a separate decision.

Preliminary Matters

3. A revised version of the National Planning Policy Framework (the Framework) was published by the Government on 19 December 2023 and is a material consideration in the determination of planning and enforcement appeals. However, the revisions to the Framework are not material to the matters raised in this appeal. Therefore, it was not necessary to invite submissions from the parties on the revised Framework.

4. The scope of an appeal on ground (a) is dictated by the terms of section 177 of the Town and Country Planning Act 1990 (the Act) which states that:

On the determination of an appeal under section 174, the Secretary of State may—

grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates.

5. Thus, in relation to the ground (a) appeal I may consider whether to grant planning permission for 'the whole or any part' of the development described in the alleged breach. In other words, that is the development as carried out. It is not open to me to grant planning permission for a different form of development. As part of their ground (a) submission, the appellants have suggested that the boundary wall could be altered by the inclusion of gates that would be equal in height to the replacement wall. To this end, I have been provided with a drawing¹ to illustrate this alternative scheme.
6. When compared to the alleged breach of planning control, the form of the boundary enclosure would be different, and would involve the addition of gates that would not form part of the demolished structure. The overall appearance would be markedly different and, therefore, I am not satisfied that this alternative scheme falls within the scope of what may be considered in relation to the appeal on ground (a). In simple terms, it would not amount to a planning permission for the whole or part of the alleged breach but instead for a fundamentally different scheme.
7. Therefore, having regard to the scope of section 177(1)(a) of the Act, I have considered the ground (a) appeal on the basis that planning permission is sought for the development as described in the alleged breach, which is the demolished boundary wall in its current form.

The appeal on ground (a)

8. The main issue is whether the development preserves or enhances the character or appearance of the Canons Park Estate Conservation Area.
9. The appeal property is a two storey semi-detached dwelling prominently located at the junction of Canons Drive with Chestnut Avenue, and within the Canons Park Estate Conservation Area (CA). The surrounding area is predominantly characterised by large interwar detached and semi-detached houses built in a Tudor revival style set within spacious plots with mature landscaping.
10. The significance of the CA is largely derived from its high quality planned 'Metroland' suburban character, with mature trees lining the streets, wide verges, boundary hedges, and attractive mature gardens providing a leafy sylvan feel to the area. Furthermore, as part of a planned Metroland residential suburb, the appeal property and its layout provide a historical narrative as to the growth of residential housing in this part of Greater London during the interwar years, adding to the significance of this part of the CA.

¹ Drawing No. 05/1105/PRELIM/103_A, Proposed Layout

11. These characteristics are readily appreciable within the immediate vicinity of the appeal site, with the appeal property being set well back from the road and thereby accentuating a sense of spaciousness. Properties on the corner plots are generally set behind a front garden/driveway with low walls, hedges or soft landscaping up to and defining the boundary and providing a degree of visual containment.
12. The development has resulted in the loss of a large section of boundary wall along the property's frontage with Chestnut Avenue. This has resulted in the loss of any visual containment and exposed the property's driveway and parking arrangements. In doing so, the development overly accentuates the visibility and dominance of the driveway and parking arrangement, resulting in a discordant feature in the streetscene. This effect is amplified by the development's prominent position within the street, being visible from a number of public vantage points. Consequently, the development amounts to a discordant feature that harmfully erodes the prevailing character and appearance of the CA.
13. In terms of the Framework, the harm to the CA would be 'less than substantial', given the extent of the development and its consequent effects. The Framework advises that this harm must be weighed against the public benefits of the proposal. However, no public benefits are advanced in favour of the appeal. From the submitted material, it appears to me that the proposal amounts to only private benefit for the appellants and their family.
14. The Framework is clear that great weight is to be given to the heritage asset's conservation. Therefore, in this case, the harm I have identified is not outweighed by any demonstrable public benefit, and so the proposal clearly conflicts with the Framework's aim to conserve heritage assets in a manner appropriate to their significance.
15. Bringing all these points together, the development is harmful to the character and appearance of the surrounding area. It follows, therefore, that the development fails to preserve or enhance the character or appearance of the Canons Park Estate Conservation Area, and this harm is not outweighed by public benefits. The development is therefore contrary to Policy D3 of the London Plan 2021, Policy CS1 of the Harrow Core Strategy 2012, Policies DM1 and DM7 of the Harrow Council Development Management Policies 2013, and the guidance set out in the Canons Park Estate Conservation Area Appraisal & Management Strategy 2013. Together these policies and guidance require development to respond positively to the local and historic context by reinforcing positive aspects of local distinctiveness and the conservation of heritage assets and their settings appropriate to their significance.

Other Matters

16. In support of the appeal, the appellants have drawn my attention to planning permission ref. P/4253/17, which in their view grants consent for the removal of a section of the boundary wall adjacent to the new garage. It is the appellants' view that if this former garage flank wall were to be removed in accordance with that consent, this would increase the sense of openness to the frontage along Chestnut Avenue. This suggested fallback position, in the appellants' view, strengthens the case for the proposed reinstatement of the wall with gates.

17. However, other than a single drawing, I do not have the full details of this other permission before me. Nor do I have a certificate of lawfulness to validate the appellants' view. In any case, from the limited information before me, that permission does not extend to the section of boundary wall that is the subject of this appeal. Furthermore, this matter does not diminish the harm I have found as a result of the breach of planning control and so this does not lead me away from my findings. In addition, and for the reasons set out above, the proposed alternative scheme with gates is not before me for consideration.

Ground (a) conclusion

18. I have found that the development fails to preserve or enhance the character or appearance of the Canons Park Estate Conservation Area. Accordingly, the development is contrary to the above cited policies of the development plan and no material considerations of sufficient weight have been advanced to overcome this.
19. Therefore, for the reasons given, I conclude that the appeal on ground (a) should fail, and that planning permission should be refused in respect of the deemed planning application.

The appeal on Ground (f)

20. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose.
21. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 (the 1990 Act) sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by making the development comply with the terms of any planning permission, by discontinuing any use of the land, or by restoring the land to its condition before the breach took place, or (b) remedying any injury to amenity which has been caused by the breach.
22. In this case, the breach of planning control is the demolition of a front boundary wall. The requirements are for the rebuild of the pre-existing wall, ensuring all materials match those used in the construction of the pre-existing wall, and for the removal of all materials and debris associated with the compliance with these requirements. Therefore, it follows that the purpose of the notice is to remedy the breach of planning control that has occurred.
23. The appellants are concerned that the reinstatement of the boundary wall will deny them the use of a vehicle crossover that was previously approved and constructed by the Council in its capacity as the Highway Authority. In this regard, the appellants point out that that enforcement regime is not meant to be punitive and therefore denying the use of the crossover would be an excessive remedy, particularly as the Council had previously confirmed that planning permission was not required for the crossover.
24. Nevertheless, to enable the use of the crossover the boundary wall would have needed to be removed, otherwise its use would be physically impossible. The appellants would have been aware of this, and they do not dispute that planning permission was required for the demolition of the boundary wall. Furthermore, the requirements of the notice seek only to remedy the breach of

planning control, namely the demolition of the boundary wall. Therefore, the requirements cannot be described as excessive.

25. Indeed, if I were to accept the appellants' argument on this ground of appeal this would result in allowing part of the wall to remain demolished, tantamount to granting planning permission. Therefore, it would not remedy the breach of planning control.
26. In addition, the appellants seek the use of an alternative brick. They wish to substitute the matching brick for a class B semi engineering brick which they consider to be a stronger material with a lower water absorption rate. I have been referred to a Technical Report² highlighting the fact that the current boundary wall has suffered from movement and consequent vertical cracking, such that it has had to be braced with a length of timber and tied back to the main house. However, the report does not conclusively find that the type of brick is to blame for the subsidence and nor does it recommend the use of an alternative brick. Therefore, there is little evidence to justify the use of an alternative material in the reconstruction of the boundary wall. Nor can I be satisfied that the suggested alternative brick would offer the same appearance, so as to satisfy the requirements of the notice. Consequently, this does not provide a lesser step that could be accepted under ground (f).
27. For these reasons, I conclude that the requirements of the notice are not excessive, and so the appeals on ground (f) must fail.

The appeal on ground (g)

28. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is six months to rebuild the pre-existing wall.
29. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with the requirements of the enforcement notice against the private interests bound up in the unauthorised development. In doing so, I acknowledge that the unauthorised development is causing significant harm to the character and appearance of the CA, a designated heritage asset. It is, therefore, in the public interest to remedy the breach of planning control as soon as reasonably possible and without delay.
30. The appellants seek an eight month period to comply with the notice, on the grounds that it will take some time to source reclaimed materials that match exactly. They are of the view that an eight month period will allow sufficient time to source, purchase, transport and lay the bricks on site. Furthermore, I am advised that a hoarding licence will be required to complete the necessary works. This is likely to require part of the footway to be closed off during the building works.
31. However, none of the appellants' claims in these respects have been substantiated by evidence. Consequently, extending the compliance period to eight months, as suggested, would perpetuate the breach of planning control and the associated harm, without sufficient justification. Therefore, in weighing the balance between public and private interests, I consider that the public interest of expeditious compliance with the requirements of the enforcement notice outweighs the private interest in extending the period for compliance.

² Technical Report on a Suspected Subsidence Claim by Crawford, dated 27 January 2015

32. I am, therefore, not persuaded that there is a need to extend the period for compliance with the requirements of the notice, and I am satisfied that the period of compliance stated in the notice is a proportionate response to the breach of planning control that has occurred.

33. Accordingly, the appeals on ground (g) fail.

Conclusion

34. For the reasons given above, I conclude that the appeals 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.

J M Tweddle

INSPECTOR