



Appeal Decision

Site visit made on 18 October 2023 by S Wilson LL.B. MSc MRTPI

Decision by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th February 2024

Appeal Ref: APP/U5360/C/23/3323043

1 Southgate Grove, Hackney, London, N1 5BT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Mary Laban against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a garden wall and fence to the front of the property.
 - The requirements of the notice are to:
 1. Make all necessary amendments to the front boundary treatment at the Property so that it accords with the conditions and approved drawings J167 PL 202A of planning permission 2019/1243 dated 29 May 2019; as attached.
 2. OR remove all parts of the wall, gate and fence that has been erected to the front of the Property as indicated in Appendix 1 'photograph of the breach'.
 3. AND make good all damage to the Property resulting from the removal of the unauthorised works as listed above.
 4. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is 3 months after the effect of the notice.
 - The appeal is proceeding on the grounds set out in the Town and Country Planning Act 1990 as amended (the Act) section 174(2) (b), (c) (d), (a), (f), and (g).
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused in respect of the development on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Ground (b)

3. An appeal on this ground is that the breach of control alleged has not occurred as a matter of fact. The onus is on the appellant to make their case. The evidence clearly shows that, during the period leading up to the issuing of the notice and at date of issue, a wall and fence had in fact been erected at the front of the appeal building. That was evident from my site visit. The appeal on this ground fails.

Ground (c)

4. An appeal on ground (c) is that the matter alleged does not constitute a breach of planning control.
5. The development amounts to operational development as defined by the Town and Country Planning Act 1990 (the Act) section 55 (1A). There is a relevant grant of permission for development application reference 2019/1243 for replacement of existing front timber fence, wrought iron gate and brick pier with new brick wall and brick pier, wrought iron fence and wrought iron gate. This permission is subject to conditions including the development is in accordance with the plans.
6. Plan reference J167 PL 202 A shows, in the front elevation, wrought iron railings embedded into the concrete coping and with a single relatively thin horizontal bar with no middle stanchion and the new brick pier lower than existing. However, the front garden plan labels the railings as: 'Proposed wrought iron railings and pedestrian gate to match existing railings on top of the side wall'. This label directly contrasts with the visual image of the front elevation.
7. Contrasted to the development as built and existing at the date of issue, the materials used for the railings are not wrought iron and the design of the railings is not as approved. There is a central vertical stanchion in the railings and two horizontal bars where only one was approved. The railings are not bedded into the concrete coping and the brickwork of the gate pillar appears to be two courses too high. These differences, collectively or individually, amount to a significantly different development. In context of the street scene these are material differences to the approved development and require planning permission.
8. As express planning permission has not been granted for the development as built, the matters alleged constitute a breach of planning controls and so this ground of appeal must fail.

Ground (d)

9. For this appeal to succeed, the onus is on the appellant to show, on the balance of probabilities, that at the time the notice was issued it was too late to take enforcement action.
10. The appellant claims that the development, as alleged, is immune from enforcement action due to the passage of time. The evidence needs to show that building operations involved in the erection of a garden wall and fence to the front of the property were substantially completed on or before 25 April 2019, the relevant date.
11. The appellant provides a Design and Access Statement (DAS) dated 28 March 2019 which contains images of the site showing that the development subject to the notice has not occurred at this date. There is no further evidence provided which shows that the development has been materially complete on or before the relevant date.
12. The appellant's evidence is not sufficiently precise and unambiguous to establish that the development, as alleged, was substantially completed on or before 25 April 2019. As a matter of fact and degree the appellant has not discharged the burden to show that, on the balance of probabilities, it was too late to take enforcement action. Ground (d) must fail.

Ground (a) – planning merits

Main Issue

13. The main issue is whether the development preserves or enhances the character or appearance of the De Beauvoir Conservation Area (DBCA).

Effect upon the Conservation Area

14. The DBCA appraisal sets out that the strengths of the DBCA are the survival of well-kept front gardens to many houses; the survival of iron boundary railings in some streets; and sets out the encouragement of high-quality new design as an opportunity. The DBCA Design Guide sets out that walls and fence materials and designs should match original examples.
15. The development has not been constructed in accordance with the plans. The materials used for the railings are not wrought iron and the design of the railings is not as approved. There is a central vertical stanchion in the railings and two horizontal bars, where only one was approved. The railings are not bedded into the coping or cement of the brickwork and the gate Pillar appears to be two brick courses too high.
16. The railings do not take their design from original examples either from on street or in the vicinity. The appellant states that the railings design matches the existing railings to the existing side wall and steps of the appeal property and that the Council accepts these as lawful.
17. It is clear from the brickwork that the wall to this boundary has been modified from original at some time in the past and it appears that this was originally stairs with railings to both sides. These side railings still exist in their entirety to one side and on the other they appear to be a mismatch of differing designs and material as they move along the modified boundary wall. It is clear that this is not an original feature.
18. The front railings match a part of this mismatched design and material, which appear to be entirely different to the railings that form one side of the original steps or any other original railings in the immediate vicinity. The DBCA design guide clearly seeks to match materials and design to original features. Consequently, the failure to match materials and design to approved plans or to existing original examples harmfully jars against the character of the DBCA and fails to conserve or enhance the DBCA.
19. The harm to the significance of the DBCA would be less than substantial in the terms of the National Planning Policy Framework (2023) (the Framework). Nevertheless, it is a matter of considerable importance and weight. The Framework requires that such harm be weighed against any public benefits of the proposal. The benefits of the proposal are private and therefore there are no public benefits that outweigh the harm. As such the development fails to either preserve or enhance the DBCA.
20. Accordingly, the development is contrary to Policies D3 and HC1 of the London Plan (2021) insofar as they seek a design led approach to heritage conservation and growth. In addition, the development fails to comply with policies LP1 and LP3 of the Hackney Local Plan 2033 (2020) (the Local Plan), insofar as they also seek good design that safeguards heritage assets. There is conflict with relevant policies of the development plan as a whole. Furthermore,

the proposal fails to comply with the relevant heritage paragraphs of the Framework and the DBCA Design Guide insofar as it seeks development to match materials and design to original features. There are no other material considerations that could outweigh the harms found.

21. For clarity, the appeal property is subject to an Article 4 direction that removes all permitted development falling within Classes (a) to (f) and Class (h) to Part 1 of Schedule 2 and Classes (a) to (c) to Part 2 of Schedule 2 of the GPDO.
22. However, the appeal on ground (a) must be determined based on the matters alleged. In that regard, I have found unjustified harm to the character and appearance of the heritage asset, that being a matter to which I must attach great weight. The appeal on ground (a) should fail.

Ground (f)

23. The notice is drafted in the alternative. It appears to me the notice seeks to remedy the breach of planning control by making the development comply with the terms of a planning permission, which is reasonable. No lesser step advanced would achieve the purpose behind the notice. As such, I find that the requirements of the notice are not excessive and the appeal on ground (f) should fail.

Ground (g)

24. Finding a contractor to fabricate the wrought iron may take some time longer than a few days; however, once the wrought iron has been secured, the remedial works involved in modifying the boundary wall to comply with approved plans are small in scale and relatively straightforward. Three months affords sufficient and reasonable time for the steps required by the notice to be achieved. Ground (g) fails.

Conclusion and Recommendation

25. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed and planning permission refused on ground (a).

S Wilson

APPEAL PLANNING OFFICER

Inspector's Decision

26. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed as set out in my Decision above.

A U Ghafoor

INSPECTOR