



Appeal Decisions

Site visit made on 2 July 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2024

Appeal Ref: APP/N5090/C/22/3311752 & APP/N5090/C/22/3311753 Oak Tree Cottage, Barnet Lane, London N20 8AP

- 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 appeals are made by Mr David Lambert and Mrs Laura Lambert against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 2 November 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission the construction of boundary fence and gate adjacent to Oaklands Road.
 - The requirements of the notice are:
 - 1 Demolish boundary fence and gate adjacent to Oaklands Road.
 - 2 Restore land to condition in 'As it was' photographs from Pre-Existing/Existing Elevations document within application 22/3682/RCU.
 - 3 Permanently remove all constituent materials resulting from the works in 1. and 2. above from the property.
 - 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) 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.
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Decisions

1. It is directed that the enforcement notice be:
 - Varied by deleting the words "3 Months" within section 6 (time for compliance) and its replacement with "5 months".
2. Subject to this variation, the appeals are dismissed, and 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.

Appeal on ground (a), the deemed planning application (DPA)

Main Issue

3. The main issue is whether the unauthorised development preserves or enhances the character or appearance of the Totteridge Conservation Area (CA).

Reasons

4. The appeal site comprises a two-storey detached, single family dwelling house located on the corner of Barnet Lane and Oaklands Road, within the CA. Whilst

the principal elevation is facing towards Barnet Lane, the vehicular and pedestrian entrance is from Oaklands Road.

5. With regards to the effect on designated heritage assets, Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
6. The National Planning Policy Framework, 2023 (the Framework) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 206 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
7. The Totteridge Conservation Area Character Appraisal Statement, 2008 (TCACAS), explains that Totteridge is predominantly residential, although there are a number of residential religious institutional uses such as St Edwards College, agricultural land, a church and presbytery, a local school, pub and restaurant and a vast expanse of open land.
8. The CA contains a variety of building styles developed informally over many years, which help to give it its distinctive character. Barnet Lane is narrow and winding and is semi-rural in character with overhanging trees, simple cottages and houses. This semi-rural setting offers a quiet and secluded countryside quality. There is extensive mature landscaping and tree cover both within the individual gardens and on many boundaries. During my site visit I observed that the spacious and landscaped gardens within the area particularly contributes to the overall open and verdant residential character and appearance of the CA.
9. The TCACAS states that the loss of front boundary hedges and planting and replacement with timber fences or grand and elaborately designed wall, railing and gate features is a significant issue throughout the CA. It also states that a number of gates have been fitted with solid panels which prevent views of houses and gardens, which has had a detrimental impact on the character and appearance of the CA and states that these should be resisted.
10. Barnet's Local Plan Supplementary Planning Document Residential Design Guidance, 2016 (Design SPD) states that in most cases, the fronts of houses should generally remain open to view in order to increase natural surveillance to the street, therefore walls, fences and hedges defining the fronts of properties should be kept low. Boundary treatments such as high railings and gates can be obtrusive and have a negative impact on the streetscene by conveying a sense of severance and overbearing.
11. The appeal property is located on a prominent corner junction of Barnet Lane and Oaklands Road and the tall close boarded fence and entrance gates, runs for a considerable length along the frontage on Oaklands Road. Given its height, length and prominence, they form a large, obtrusive and incongruous

feature in the street scene which does not allow views into the property and is at odds with the predominantly open and verdant character of the area with consequent harm to the character and appearance of the CA. I am not convinced that the harm would be overcome by removal of the gates alone, since the fence in the front garden is particularly prominent and incongruous in views from the street.

12. I appreciate that the new fence and gates has been designed to match the design and height of the existing timber fence which screens the rear garden from the road. Nevertheless, prior to the current unauthorised development, the frontage of the property on Oaklands Road comprised a low sleepers close to the boundary with hedging, which preserved the verdant and open character of the CA. Furthermore, I do not consider that additional landscaping, or the minimal gap beneath the gate mitigates this harm as it is the excessive, height, scale and size of the boundary treatment, preventing views into the property, which is particularly discordant.
13. I have had regard to the appellants' statement which refers to a number of boundary treatments nearby. With regard to Apple Lodge, whilst this property has a solid entrance gate, the gate is set back from the pavement edge and the boundary treatment also comprises metal railings with hedging behind, which preserves the leafy and open character of the CA. In addition, the solid gate at No 2 Oaklands Road is well set back from the Road, and therefore both of these developments are not as prominent in the streetscene as the development before me.
14. In addition, the existing old boundary fence on Northcliff Drive is set back from the pavement edge and also screened by mature tree planting. Also, the frontage to that particular property remains open with clear views into the front garden. With regard Geraldine Cottage on Harmsworth Way, the boundary treatment to the front of the property comprises a low wall and open front drive, thereby preserving the openness of the site. Furthermore, the property on Barnet Lane, directly opposite the War Memorial in Totteridge Village, has a tall solid gate, but this is well set back from the pavement edge and therefore is also not as prominent in the street scene as the development before me.
15. Similarly, the sections of panelled boundary treatment at Waen Avon, Barnet Lane, represent only a relatively small section of that frontage, are set back from the pavement edge and are positioned next to metal gates allowing views through to the property and front garden. Therefore, none of the other examples cited appear to be directly comparable to the appeal development and therefore do not alter my decision. In any event, I have assessed this case on its own merits.
16. In the terms of the Framework and paragraph 208, the harm that the development causes to the significance of the designated heritage asset, which is the CA, would amount to less than substantial harm. Accordingly, this should be weighed against the public benefits of the development.
17. The appellants state that the fence and gates provide additional safety and security for occupiers of the dwelling and act as a deterrent against crime. I have great sympathy for the appellants and can understand that they wish to improve the security of their property. However, the harm to the character and appearance of the CA, to which I afford considerable importance and weight, would not be outweighed by these benefits. Furthermore, I also consider that

there would be alternative measures that could be explored to provide these benefits without causing harm to the CA.

18. I therefore conclude that the unauthorised works result in a visually discordant and incongruous addition, which is harmful to the character and appearance of the CA, as a whole. As such, it fails to preserve or enhance the character or appearance of the CA, contrary to policies CS1 and CS5 of Barnet's Local Plan Core Strategy DPD, 2012, and policies DM01 and DM06 of the Barnet Local Plan Development Management Policies DPD, 2012. Amongst other things, these seek to ensure that development proposals respect, preserve or enhance local context and character, and preserve or enhance the character and appearance of Barnet's Conservation Areas.
19. It would also conflict with the relevant requirement of the Framework which seeks to conserve and enhance the historic environment. Finally, it would not preserve or enhance the character or appearance of the conservation area as required by Section 72(1) of the Act. This carries considerable weight and importance to my decision.

Conclusion on Ground (a) and the DPA

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The development harms the character and appearance of the CA, in conflict with the development plan taken as a whole. There are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
21. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) and the DPA should fail.

The Appeal on Ground (f)

22. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
23. The enforcement notice requires the removal of the unauthorised development and restoration of the land to its condition before the breach took place. Therefore, the purpose of the notice is to remedy the breach of planning control.
24. The appellants consider that steps 1 and 2 are excessive since the removal of the fence and gate would leave the property and occupants vulnerable if not enclosed. The appellants state it would be more reasonable to require the gate to be lowered rather than removed in its entirety and/or to allow an alternative boundary treatment comprising railings and hedge. However, no drawings of this revised scheme have been submitted and therefore I am unable to determine what the proposed gate, railings and boundary treatment would look like. Indeed, it is open to the appellants to submit a planning application to the Council for a revised scheme if they so wish.
25. The planning merit arguments advanced by the appellants in relation to the character and appearance of the site have already been addressed under the

ground (a) appeal. Furthermore, step 3 of the requirements is necessary to restore the land to its conditions before the breach took place.

26. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellants whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.

27. On this basis, the Ground (f) appeal fails.

The appeal on Ground (g)

28. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellants ask that the time for compliance is extended from 3 to 6 months, to carry out the necessary work. They state that Covid-19 pandemic and Brexit, has all had an impact organising tradesman to carry out the remedial works. They also state that it is important that the correct planting and materials are used to preserve the character and appearance of the CA.

29. I have found under the ground a) appeal that the unauthorised development results in harm to the character and appearance of the CA. As such, 6 months requested by the appellants to comply with the notice is disproportionately excessive to complete the requirements.

30. Nevertheless, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view, 5 months would strike a more reasonable and proportionate balance to carry out the remedial works. This would also provide additional time to obtain planning permission for a revised scheme. I shall therefore extend the period from 3 to 5 months for compliance with the notice.

31. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusions

32. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR