



Appeal Decision

Site visit made on 8 October 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

Appeal Ref: APP/H5960/C/23/3321879

49A Taybridge Road, London SW11 5PR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Suraj Vithlani against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The notice was issued on 6 April 2023.
 - The breach of planning control as alleged in the notice is without planning permission and within the last 4 years, the erection of a wooden fence to the front boundary of the property.
 - The requirements of the notice are to:
 1. Remove the unauthorised fence from the front boundary and restore the property to its previous condition; and
 2. Remove from the site all debris arising from compliance with step 1.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) 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.

Preliminary Matter

2. Since the appeal was made, the Wandsworth Local Plan 2023 – 2038 has been adopted (Adopted July 2023). The Council were asked to confirm and provide copies of the policies from the plan, which they intend to rely on. The appellant was given the opportunity to provide comments in relation to those policies and any comments received have been considered.

The appeal on ground (d)

3. An appeal on ground (d) is on the basis that, at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice.
4. By virtue of section 171B(1) of the 1990 Act, where there has been a breach of planning control consisting of the carrying out of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach, being the date the fence was substantially completed.

5. To succeed on this ground, the appellant would need to demonstrate that the fence was substantially completed more than four-years prior to the date of issue of the notice, namely before 6 April 2019.
6. The appellant's case is that the fence as it exists is not materially different to a previous fence which was in place in around July 2016 and accordingly it was erected more than four years ago. However, that previous fence was subject of an enforcement notice dated 29 April 2019 which was not appealed and therefore came into force. Accordingly, the previous fence was not lawful.
7. In any event, even if that fence was lawful, as the previous Inspector found in the appeal relating to the application for a lawful development certificate¹, notwithstanding whether the structure of the pre-existing cane/bamboo fence was used to take the close boarded cladding, the two fences are, as a matter of fact and degree, completely different in character and construction. The earlier one was a lightweight semi-translucent screen, whereas the appeal fence is a solid timber construction. I see no reason to take a different view.
8. Accordingly, the erection of the close boarded timber fence, subject of the notice, constituted a new building operation and development for which planning permission is required.
9. Since the appellant has provided no evidence which demonstrates, on the balance of probabilities, that the fence, subject of the enforcement notice, was substantially completed more than four years before 6 April 2023, the appeal on ground (d) must fail.

The appeal on ground (a) the deemed planning application

10. The main issues are the effect of the fence on (i) the character and appearance of the area and (ii) the living conditions of the occupants of the basement flat with particular regard to outlook and daylight/sunlight matters.

Reasons

Character and appearance

11. Taybridge Road predominantly consists of two to three storey traditional terrace properties with some more contemporary infill development. The terraces have small front yard/garden areas, which are surrounded by relatively low brick or rendered walls, some with railings, perforated blocks, or hedges above. The general height and design of boundary treatments to frontages along the street ensures a level of visual permeability.
12. Viewed in this context the fence due to its solid design and height, appears appreciably taller than other boundary treatments on other frontages in the vicinity of the site. Moreover, due to its position, adjacent to the footway, it appears unacceptably enclosing, which contrasts with the sense of openness that characterises the frontages of nearby dwellings. Overall, the fence is a dominant and incongruous feature that appreciably harms the character and appearance of the area.
13. There are tall timber fences which surround more contemporary properties, referred to by the appellant. However, their existence does not alter my view

¹ APP/H5960/X/21/3280104

that such boundary features are not characteristic of the frontages to traditional terrace properties in the immediate locality.

14. There are some reasonably tall hedges however, hedges have a natural and soft appearance, not the solid appearance of a close boarded fence. As such they are not comparable to the appeal development.
15. For the reasons given, the fence causes material harm to the character and appearance of the area contrary to policies LP1 and LP5 of the Local Plan which together require that the scale, massing, and appearance of development provides a high-quality, sustainable design that enhances and relates positively to the prevailing local character.
16. It also conflicts with the design aims of The National Planning Policy Framework (the Framework) which states that planning decisions should ensure developments are visually attractive as a result of good architecture.

Living conditions

17. The fence has been erected to the front boundary of a traditional terrace property, subdivided into flats, and surrounds the lightwell which serves the basement flat. Given the position of the flat mostly submerged below the pavement and proximity to and heights of external retaining structures, the fence will further limit the daylight entering the flat, resulting in a particularly gloomy living environment. Moreover, given the height of the fence, this arrangement offers a particularly bleak and oppressive outlook for occupants.
18. I acknowledge the appellant's reasons for requiring the fence, namely that it protects the occupants of the lower ground floor flat against overlooking, fly tipping, and overflowing bins of upstairs flats. Nevertheless, since it has not been demonstrated that the fence is the only means by which these matters could be addressed, this is a matter of little weight.
19. For the reasons given, the fence is contrary to Policy LP2 of the Local Plan which requires that development does not have an overbearing impact as a result of height or scale, massing, or siting, and avoids unacceptable impacts on levels of daylight and sunlight for the host building.
20. It also conflicts with the aims of the Framework which seeks to ensure a high standard of amenity for existing and future users of buildings.

Conclusion

21. 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).

Felicity Thompson

INSPECTOR