



Appeal Decision

Site visit made on 27 November 2024

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2024

Appeal Ref: APP/Y5420/C/23/3320628

5 Grange Road, LONDON, N6 4AR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Dr Abdul Nasar Gaddad against an enforcement notice issued by the Council of the London Borough of Haringey ('the Notice').
 - The notice was issued on 9 March 2023.
 - The breach of planning control as alleged in the notice is the erection of a front boundary wall and 2 gates.
 - The requirements of the notice are: 1. Reduce the height of the front boundary wall and pillars (including caps) to a height not exceeding 1.6m and 1.8m respectively; 2. Remove the black railing pedestrian and vehicular gates and replace with timber gates that do not exceed 1.6m in height. OR 1. Demolish the front boundary wall (including pillars) and gates in their entirety. 2. Reinstate the front boundary walls (including pillars and caps) and the gate that existed prior to the unauthorised development, using the same dimensions and the same or similar materials and design – as shown in the image at Annex 1.
 - The period for compliance with the requirements is: 2 calendar months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is varied by extending the period for compliance to 6 months. Subject to the variation, 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.

Main Issue

2. The main issue is the effect of the development on the character and appearance of the Highgate Conservation Area.

Reasons

3. A plan supplied by the Council shows that the appeal site lies within the Highgate Conservation Area ('HCA'). This is a designated heritage asset where, under the terms of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, developments are required to preserve or enhance the character or appearance of the conservation area ('the statutory test').
4. I have not been provided with a conservation area appraisal or statement that provides a description of the character and appearance of the HCA, so that which I give arises from my site visit. As its name suggests, Highgate is on an area of higher land and many of the streets within the HCA are steeply

sloping. It is, for the most part, a residential area. In the area around Highgate Underground station, where the A1 runs, it is busier and noisier with commercial properties along the road. There, the development has, in the main, a tighter grain. Away from this area, the noise and movement of the A1 is soon lost and the streets become quiet, overtly residential and the grain of development less tight with areas of open space.

5. Grange Road is a quiet private road that is lined by residential properties. These dwellings are mainly two-storey in scale and have a variety of forms, ranging from a short terrace of relatively small dwellings to large detached houses and what appeared to have been a single large property of some bearing that, although the numbering was unclear, appeared now to be 14-16 Grange Road.
6. The road is straight and fairly wide and falls gently from southeast to northwest. The development along its length is set back from the carriageway, behind quite generous front gardens.
7. The boundary between 5 Grange Road ('No 5') and the road is formed by black railing vehicular and pedestrian gates at its lower end, with brick walls topped by similar railings running up the hill to its boundary with 7 Grange Road. The metalwork, which is quite flamboyant in design, is backed by opaque glazed sheeting that precluded views into or out of the property.
8. The planning history for the site shows that a retrospective planning application was made in April 2021 for the retention of the front boundary. The Council refused planning permission and the decision was taken to appeal. That appeal (Planning Inspectorate reference number APP/Y5420/D/21/3279254) was dismissed in April 2022. In that decision, the boundary treatment was described as being "out of keeping...overly formal...excessively defensive" and that it caused "harm to the character and appearance of the host dwelling and HCA".
9. That harm was described as being "less than substantial". In those circumstances, the National Planning Policy Framework ('the Framework') requires such harm to be balanced against any public benefits arising from the development. None considered to be substantive were put forward by the Appellant, so the appeal was dismissed.
10. Although I find the Council's assertion that the wall is "fortress-like" to be somewhat hyperbolic, I have no reason to disagree with the findings and decision that was made in the earlier appeal. The boundary treatment causes harm to the character and appearance of the HCA, contrary to the terms of the statutory test and relevant policies from the development plan.
11. Indeed, in the appeal before me the Appellant accepts the finding in that appeal. His case is based on providing the public benefits that were lacking in the earlier appeal, which he states outweigh the limited harm. This is the nub of the appeal.
12. One of the Appellant's children suffers from acute mental health disorder; this has been substantiated in an 'Expert Psychology Report'¹ ('the Report'). At the time that the report was written, the child was 6 years old, so he would now be around 8 years old. The Appellant sets out that the wall and gates have

¹ Dr Mohamed Altawil, Consultant Clinical Psychologist – Dated 15 October 2022

been erected to provide a safe and secure environment to prevent his child from 'escaping'. He states that he has done so at previous addresses by vaulting over walls and fences. The wall, he says, provides substantive public benefits as it not only safeguards his son but also members of the public passing the house. He says that the results of the child's escape could "potentially lead to tragedy" arising from "a confused and upset as well as hyperactive young boy roaming unsupervised in the area". His case is that these factors outweigh the less than substantial harm that the development has caused to the HCA.

13. Section 149 of the Equality Act 2010 imposes the public sector equality duty (PSED) on "a public authority...in the exercise of its functions"; this includes Inspectors determining appeals. The duty is to have due regard to its three aims: to eliminate discrimination, advance opportunity or foster good relations. It arises here because the decision on this appeal could significantly impact on land used by a person with one or more protected characteristics: a child with significant mental health issues.
14. Article 8(1) of the Human Rights Act 1998 ('HRA') provides that everyone has the right to respect for their private and family life, their home and their correspondence. This is triggered by the circumstances of this case. Although not incorporated into UK law, Article 3(1) of the United Nations Convention on the Rights of the Child are also pertinent to my decision. This provides that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".
15. In setting out the child's mental health issues, the Report refers to instances of cases where the child has slipped his parents' hands in the street, his significant difficulties in safely controlling his motor activities, his anger issues and his lack of appreciation of the risk arising from his actions to himself and others. It does not, however, make any comment in respect of the necessity of the walls and gates that form the subject of the appeal. In this regard, the only evidence put forward is the comment from the Appellant that "the boundary wall and gate was designed to be of such a height (1.8m) so as to provide a deterrent".
16. Furthermore, the Appellant has made no submission on whether any possible alternative means of providing the safe and secure environment he seeks have been explored and, if they have been, why they are not suitable. Furthermore, the Appellant makes no comment on whether the wall and gates that the second requirement of the Notice would allow, would provide the required environment at No 5.
17. From the evidence, I find that there would be public benefits arising from the retention of the walls and gates, in the form of the enhanced safety of the Appellant's child. The claim that there might be some further benefit through the safeguarding of members of the public is not substantiated. I do not say that it would not arise, but there is little evidence in the submissions to back this up.
18. I must attach great weight to the statutory aim to preserve or enhance the character or appearance of the HCA and, even though the boundary treatment causes less than substantial harm to it, the public benefit requirements should not be underplayed. In the absence of any adequate exploration of other

options or explaining why the Council's alternative is unsuitable, my finding is that these benefits do not outweigh the harm.

19. As such, the development fails to accord with the statutory test and the terms of Policy HC1 of the London Plan (2021), as well as Policy SP12 of the Haringey's Local Plan Strategic Policies 2017 ('HLP') and Policy DM9 of the Development Management DPD 2017 ('DPD') which reflect the test. Its design fails to enhance and enrich the borough's built environment and is therefore contrary to the terms of HLP Policy SP11 and DPD Policy DM1. Policy DH6 of 'A Plan For Highgate', the Highgate Neighbourhood Plan, 2017 requires front boundaries to contribute positively to the public realm, which this development fails to do. It is also, therefore, contrary to the terms of this policy.
20. As DPD Policy DM12 relates to the design of new housing and residential extensions, I do not find it to be relevant to this appeal.
21. For the above reasons, the Ground (a) case is dismissed.

Ground (g)

22. The Appellant has not made an appeal under Ground (g), which is to say that the period for compliance with the requirements of the Notice are unreasonably short. However, I have instigated this.
23. I find that the period for compliance would be appropriate in normal circumstances, and no reason has been given why this would not be the case. However, given the Appellant's child's circumstances, I wrote to both parties asking their comments on extending the period for compliance to 6 months. The reasons being that this would give the Appellant time to make alternative arrangements or to make a further application to the Council.
24. No response was received from the Appellant. For its part, the Council said that it had exercised its PSED duties, and this was reflected in its actions. Further, it said that the time for compliance should not be extended to allow time for a further application to be made; a well-made point that I take. It did not object to the 6-month time frame in principle, but stated that the Appellant should explain why this might be needed. It finished by making reference to its powers to extend the period for compliance, set out in s173A of the Act.
25. I have taken the Council's comments into account. However, I am of the view that additional time should be provided to allow the Appellant the opportunity to provide alternative arrangements. I shall vary the Notice by extending the period for compliance to 6 months.

Conclusion

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with 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 Curnow

INSPECTOR