



Appeal Decision

Site visit made on 1 July 2025

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2025

Appeal Ref: APP/P4605/C/23/3333837

76 Russell Road, Birmingham B13 8NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Mahzen Tahhan against an enforcement notice issued by Birmingham City Council.
 - The notice was issued on 26 October 2023.
 - The breach of planning control as alleged in the notice is the erection of a brick boundary wall, pillars, metal railings and installation of gates to the front of the Land in the approximate position marked in green on the attached plan.
 - The requirements of the notice are:
 1. Remove the wall, pillars, gates and railings in their entirety and restore the land to its original condition prior to the unauthorised development taking place; or
 2. Reduce the height of the wall, pillars, gates and railings to no more than one metre from ground level and remove from the land any materials resulting from the height reduction works.
 - The period for compliance with the requirements: 2 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). 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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Decision

1. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development carried out, namely the erection of a brick boundary wall, pillars, metal railings and installation of gates at 76 Russell Road, Birmingham B13 8NH, as shown on the plan attached to the notice.

Preliminary Matter

2. Since the appeal was lodged, a revised version of the National Planning Policy Framework ("the Framework") was published in December 2024. I have considered the changes and as they are not material to the appeal development, further comments were not sought. I have, however, determined the appeal having regard to the revised Framework.

Main Issue

3. The main issue is whether the development preserves or enhances the character or appearance of the Moseley Conservation Area.

Reasons

4. The appeal property is a large detached residential dwelling situated on the corner of Russell Road and Goodby Road and is within the Moseley Conservation Area

(MCA). The appeal development consists of a low-level brick wall with pillars that are approximately 2 metres in height. Between the pillars are black metal railings as well as black metal gates on both the Russell Road and Goodby Road frontages.

5. The MCA was designated in 1983, and its special interest is derived from the variety of architectural styles in the buildings which include mid-Victorian villas, Arts and Crafts houses, and three storey Edwardian residencies. The houses in Russell Road were built in the first three decades of the 20th century and predominately combine Edwardian and Interwar houses.
6. The Moseley Conservation Area Character Appraisal and Management Plan 2005 ("Appraisal and Management Plan") sets out that residential properties were historically defined by low sandstone, limestone, or rubble walls with native hedging behind. However, from my own observations there is now a mix of boundary treatments to properties along Russell Road, including some low walls with native hedging behind as referred to in the Appraisal and Management Plan, but also examples of taller walls and pillars with accompanying gates and railings.
7. The Appraisal and Management Plan states that the removal or partial removal of boundary walls will not be permitted, and that any replacement walls will be built using traditional materials such as limestone, sandstone, or reconstituted stone of a suitable design. In this case though, there is no evidence before me to suggest that any existing boundary walls were removed to facilitate the development. Instead, the frontage was previously a grassed area enclosed by trees and planting.
8. The Appraisal and Management plans also sets out that brick walls will not normally be acceptable. I acknowledge that the wall and pillars have been constructed in brick and are not traditional materials. Nevertheless, there are several examples of other boundary treatments in the vicinity which consist of brick-built walls of varying colour and type.
9. Similarly, there are examples of metal gates and railings on front boundaries of properties near the appeal site. Whilst brick walls and pillars with metal railings and gates are not a predominant form of boundary treatment, they are common enough to not appear incongruous. As a result, I do not find the design and style of the appeal development to be out of keeping with the surrounding street scene or have a detrimental impact on the character and appearance of this part of the MCA.
10. In terms of its scale, I do not consider the appeal development to be so substantial that it dominates the street scene or appears overly prominent. Whilst I acknowledge that the corner plot location increases its visibility when approaching along Russell Road from the north, I do not find the height of the boundary treatment to be excessive. There are boundary treatments of similar heights nearby, and the railings which sit on top of the low-level wall allow views into the site which significantly reduces the visual impact of the boundary treatment. The planting behind the wall and railings further softens its appearance.
11. My attention has been drawn to various other appeal decisions in relation to boundary treatments at properties on Russell Road and elsewhere in the MCA. However, none of these alter my view that the appeal development is not out of

keeping or so dominant to cause harm to the character and appearance of the surrounding area.

12. I also understand the frustrations of interested parties that the development was carried out without first obtaining planning permission, as well as concerns over the loss of historic or architectural features in the MCA. However, as set out above there has been no loss of any traditional boundary treatment in this instance.
13. For the reasons set out above, I conclude that the appeal development does not harm the character or appearance of the MCA or its significance as a designated heritage asset. Instead, the development preserves the area's character and appearance. Accordingly, I find no conflict with Policies TP12 and PG3 of the Birmingham Development Plan 2031 (adopted January 2017) which seek, amongst other things, to ensure that the historic environment is protected and that developments reinforce local distinctiveness.
14. The Council have referred to City Note LW-24 contained within the Birmingham Design Guide Supplementary Planning Document (September 2022) (SPD) which states that the *"design, location and height of boundary treatments must align with and complement the character of the surrounding area; and must not lead to the fortification of properties. High boundaries at property frontage (beyond 1.2m) will not be supported"*. I have found that the appeal development is not out of keeping with the character and appearance of the surrounding area. However, the boundary treatment does exceed 1.2 metres in height and thus there is a technical breach of the SPD.
15. That said, the SPD is guidance rather than policy and no such rule is set out in the development plan policies. Whilst the SPD is a material consideration, there are other factors to take into account and given that I have found the development does not cause harm to the character and appearance of the MCA, its strict application would not be appropriate in this instance.

Conditions

16. I have considered the imposition of appropriate planning conditions, having regard to the six tests set out in the Framework. No suggested conditions have been put forward and given that the works have already been undertaken on site, I see no reason why any conditions would be necessary in this instance.

Conclusion

17. For the reasons given above, I conclude that the appeal succeeds on ground (a) and planning permission is granted in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended.

David Jones

INSPECTOR