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## Appeal Decision

Site visit made on 28 August 2019

**by Stephen Hawkins MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 September 2019**

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### **Appeal Ref: APP/B5480/C/18/3205094**

### **18 Sylvan Avenue, Hornchurch RM11 2PN**

- 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 appeal is made by Mr Salman Mirza against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 16 May 2018.
- The breach of planning control as alleged in the notice is without planning permission the erection of a boundary wall with railings and installation of metal gates to the front elevation facing the highway of Sylvan Avenue in excess of 1 metre.
- The requirements of the notice are: (i) Remove the walls, gates, railings and associated apparatus in their entirety from the front boundary of the dwelling; Or (ii) Reduce the height of any part of the walls, gates, railings and associated apparatus facing Sylvan Avenue to no more than 1 metre in height; and (iii) Remove all materials and debris resulting from step (i) or step (ii) from the site.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal succeeds in part and the enforcement notice upheld as varied in the terms set out below in the Formal Decision.**

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### **Preliminary Matter**

1. As submitted, the appeal included ground (b). This ground of appeal concerns whether the matters alleged in the enforcement notice have occurred as a matter of fact, i.e. whether the development alleged in the notice has taken place. However, in this part of the appellant's case it was argued that the boundary wall, railings and gates erected already benefitted from planning permission. This is more relevant to ground (c)-that the matters alleged in the enforcement notice do not constitute a breach of planning control. The appellant also referred to s174 (c) in their ground (b) submissions. Therefore, although the appeal was not explicitly made on ground (c), I consider it appropriate to deal with the relevant matters on that basis.

### **Ground (c) appeal**

2. It is for the appellant to show that the matters alleged in the notice do not constitute a breach of planning control, the relevant test to be applied to the evidence being on the balance of probability.
3. The appeal site contains a substantial two storey dwelling erected following the grant of planning permission in August 2011<sup>1</sup>. A brick wall with stone copings

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<sup>1</sup> Council Ref: P0893.11.

and metal railings above has been erected across the site frontage. Two vehicular entrances are located towards opposite ends of the wall, with a central pedestrian entrance. The entrances are flanked by tall stone piers, with solid gates hung between the piers. There are also stone piers situated at either end of the wall. The frontage boundary treatment is adjacent to the street and exceeds a metre in height.

4. Details of the frontage boundary treatment were not shown on the approved plans for the dwelling. Planning permission was granted subject to several conditions, including condition 10 which required full details of the boundary treatment to be submitted to and agreed in writing by the Council prior to the commencement of development. Details pursuant to condition 10 were submitted to the Council. On 27 March 2012, the Council confirmed that those details were acceptable and the condition was "*discharged in part*".<sup>2</sup> An extract from the approved plan for condition 10 shows the location of the frontage boundary treatment including vehicular and pedestrian entrances and the piers. The frontage has been laid out in a similar manner to that shown on the plan.
5. However, no elevational details of the frontage boundary treatment were shown on the plan approved under condition 10. No details of the overall height of the boundary treatment was specified. The plan is annotated as follows: "*North boundary to front of property brick/stone piers with brick wall/stone coping and black cast iron railings-design detail tbc*". This clearly shows that details of the frontage boundary treatment had been reserved for future consideration. The Council's letter of 27 March 2012 made it clear that condition 10 had not been fully discharged. To comply with the condition, the appellant should have applied and have received approval from the Council in respect of the outstanding details of the frontage boundary treatment. The heights of boundary treatments at nearby properties cannot be construed as giving approval under condition 10 for the wall, railings and gates as built.
6. Consequently, the available evidence does not show that the wall, railings and gates benefit from planning permission. It follows that their erection constitutes a breach of planning control and the ground (c) appeal must fail.

#### **Ground (d) appeal**

7. The ground of appeal is that at the date the notice was issued, it was too late to take enforcement action. At s171B (1), the Act provides that where there has been a breach of planning control consisting in the carrying out without planning permission of operational development, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Therefore, in order to succeed on this ground, the appellant would have to show that the operations described were substantially completed more than four years before the date of the notice, the relevant test of the evidence being on the balance of probability.
8. What is meant by the term "substantially completed" for the purposes of s171B (1) is not defined in the Act. Consequently, what is substantially complete must always be decided as a matter of fact and degree. Whether contractual obligations between an owner and their builder have been fulfilled is of limited assistance in terms of establishing whether there has been substantial completion in a planning context. What is relevant is the extent of the

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<sup>2</sup> Council Ref: Q0275.11.

operations that had been carried out prior to the beginning of the four-year period (i.e. before 16 May 2014), when assessed against the operations of erecting the boundary wall, railings and gates as a whole.

9. The appellant's evidence is that the wall and steel supports for the piers were constructed between December 2013 and 31 March 2014. This is supported by a Google Street View image of the site frontage, purportedly taken at some time during May 2014. However, in the above image the stonework had only been constructed to the lower parts of most piers. In the case of at least two piers, no stonework had been constructed. By the appellant's own estimate, the stonework to the piers was 50% complete at that time. None of the railings or gates had been installed.
10. Therefore, at the date the above photograph was taken a considerable amount of operations were still required to be carried out, notably erecting the stonework to significant parts of the piers and installing the railings together with the gates, in order to reach the state of the frontage boundary treatment as it now exists. In the context of the whole operations in the notice, the scale of the outstanding works was significant and not *de minimis*. Accordingly, I find that as a matter of fact and degree, the operations involved in erecting the wall, railings and gates had not been substantially completed at the date of the above photograph.
11. The wall and steel supports form a part of the whole operations to form the wall, railings and gates. The Courts have held that the four year period does not begin until the whole operations are substantially complete<sup>3</sup>. Accordingly, the wall and steel supports cannot be immune from enforcement action, even if those operations were undertaken more than four years prior to the date the notice was issued.
12. Therefore, the available evidence does not show that, on the balance of probability, the operations in the notice had been substantially completed more than four years before the date the notice was issued and the ground (d) appeal must also fail.

## **Ground (a) appeal**

### **Main Issue**

13. The main issue in this ground of appeal is the effect of the wall, railings and gates on the character and appearance of the area.

### **Reasons**

#### *Character and appearance*

14. The site is located in an established residential area, mostly made up of substantial detached dwellings of varying design and age occupying spacious and well-landscaped plots, forming part of the Emerson Park Policy Area (EPPA). Whilst hedge planting has been retained at some properties, the prevailing frontage boundary treatment in the locality comprises low brick walls with metal railings above, set between brick piers. The piers are generally slender and of a similar overall height to the corresponding railings. Typically, properties have railed metal gates of a similar appearance and overall height to

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<sup>3</sup> *Ewen Developments Ltd v SSE* [1980] JPL 404.

- the corresponding railings. These boundary treatments generally exhibit similarities in terms of their overall height, some being up to around two metres from ground level at the highest point. In some instances, maturing planting is present behind the frontage boundary treatment.
15. During my site visit, I observed that with some variation in detailed design, the form of frontage boundary treatments described above were commonplace in the street and the wider surroundings, particularly where the dwellings had been erected or modernised in recent years. The combination of low brick walls, slender brick piers, railings and corresponding railed gates assisted significantly in breaking up the scale of the frontage boundary treatment, reducing its visual presence and allowing for extensive views towards the front elevations of the dwellings. Consequently, these boundary treatments have largely retained a significant sense of openness in the street scene which in turn contributes positively to the spacious, suburban character and appearance of the area.
  16. The site has a relatively wide frontage in comparison with that of nearby properties. The wall is appreciably taller than many found in the locality, with a more limited extent of railings above. Apart from one brick pier, the eight other piers are considerably taller than the overall height of the railings. The piers also have a substantial width, which together with their height means that they have a considerably greater scale than similar piers at nearby properties. As a result, the piers have a significant visual presence. This is reinforced by the extensive stonework facing, which contrasts with the mostly recessive finishes of the wall and railings, as well as the number of piers. Also, the gates have a solid appearance and they are of substantial size, being of a height not dissimilar to that of the piers. As a result, the gates contrast starkly with the more lightweight and permeable qualities of gates generally found at other properties in the locality.
  17. Due to the above factors, the wall, railings and gates are viewed as obvious features when approaching the site from either direction along the street. They have given the site frontage a more harsh, oppressive, built-up and defensive appearance, significantly eroding views towards the dwelling, reducing the sense of openness and creating a stronger feeling of enclosure in the street scene. Whilst the above might not be untypical of a more urbanised situation, it is entirely at odds with other frontage boundary treatments in the vicinity. There were few examples of such high, solid boundary treatments in the surrounding area. Maturing shrub planting behind the frontage has not significantly softened the overall appearance of the wall, railings and gates. Therefore, whilst being designed by an architectural practice and using high quality external materials, the wall, railings and gates appear as alien features in the surroundings and they unacceptably erode the spacious, suburban character and appearance of the surrounding area.
  18. None of the specific examples of frontage boundary treatments referred to has a similar visual impact to the wall, railings and gates. Although 15 Sylvan Avenue (No 15) opposite is of similar scale to the dwelling at the site, that property has a low front wall and tall railings above and railed gates, with piers mostly set back from the street. At 20 Sylvan Avenue, the wall, railings and piers are all lower than those at the site and the property has railed gates set back from the frontage. The walls at 23 Sylvan Avenue are significantly lower compared to the wall, railings and gates in this appeal. There are good views

at that property across the forecourt towards the dwelling and the frontage is narrower compared to the site. The frontage boundary treatments at 15 Elm Grove and 51 Parkstone Avenue are similar to No 15. The frontage boundary treatment at 25 Nelmes Way (No 25), granted planning permission at appeal in March 2017<sup>4</sup> has a similar arrangement to No 15. Although according to the measurements supplied the railings at No 25 have an overall height greater than those at the site, the piers are significantly lower. Consequently, the wall, railings and gates do not compare favourably with the above examples.

19. A wall reduced to a metre high would have significantly less visual impact than the frontage boundary treatment as built. It would also be more compatible with the low walls forming part of other frontage boundary treatments in the surroundings, it would afford a greater sense of openness in the street scene reflecting the spacious, suburban qualities of the locality and it would not be at odds with the scale of the dwelling. As a result, the steps required by the notice would not harm the character and appearance of the area when compared with retaining the wall, railings and gates as built.
20. Therefore, the wall, railings and gates fail to accord with Policy DC61 of the Havering Core Strategy and Development Control Policies Development Plan Document (DPD), as they do not maintain the character and appearance of the local area. The failure to maintain the special character of the EPPA does not accord with DPD Policy DC69. The wall, railings and gates do not accord with Policy 7.4 of the London Plan (LP), as a high quality design has not been provided having regard to the pattern and grain of the existing spaces and streets and a positive relationship with street activity has not been created. Moreover, there is a failure to accord with LP Policy 7.5, as the landscape treatment is not of the highest quality. Furthermore, the wall, railings and gates do not accord with LP Policy 7.6, as they are not of the highest architectural quality using details and materials that complement the local architectural character.
21. As the wall, railings and gates do not reinforce the prevailing character of the streetscape, they are also inconsistent with the Council's Residential Extensions and Alterations and Landscaping Supplementary Planning Documents (SPD). Additionally, the incompatibility in terms of massing and architecture with the character of the local street scene is inconsistent with the Council's EPPA SPD. The failure to achieve a well-designed place is inconsistent with the National Planning Policy Framework at Section 12.

#### *Other matters*

22. A suitable planning condition could be imposed to secure the provision and maintenance of adequate pedestrian and vehicular inter-visibility at the site entrances. However, the absence of unacceptable harm to highway safety does not weigh in favour of allowing the appeal and granting permission for the wall, railings and gates.

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<sup>4</sup> Ref: APP/B5480/W/16/3162908.

*Conclusion on ground (a)*

23. For the reasons given above I conclude that the ground (a) appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

**Ground (f) appeal**

24. The ground of appeal is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity.
25. At s173, the Act sets out two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4) (a)) is to remedy the breach of planning control that has occurred, by discontinuing any use of the land or by restoring the land to its condition before the breach took place. The second (s173(4)(b)) is to remedy any injury to amenity caused by the breach.
26. The Council did not specify in the notice whether it was one or both above purposes that it sought to achieve. However, the alleged breach is the erection of a wall with railings and gates to heights in excess of a metre. The notice requires removal of those operations or alternatively, their reduction to no more than a metre in height. Consequently, the purpose of the notice cannot be limited to remedying the breach, as the alternative requirements stop short of removing all the operations described in the notice. It follows that the notice must also have the purpose of remedying an injury to amenity.
27. On a fair reading, the notice at step (ii) requires a reduction in the overall height of the wall, railings and gates to no more than a metre. How that reduction in height is achieved is not specified in the step and is thus a matter for the appellant. Consequently, there is no inherent tension between requiring a reduction in the overall height of the boundary treatment and the heights at which those railings and gates are currently installed. In any event, the notice requirements should be read as a whole. The appellant can remove the wall, railings and gates under step (i) should he find that it is not practical to comply with the alternative requirements in step (ii).
28. Step (iii) requires the removal of all materials and debris from the site. I am mindful of the overall cost of the wall, railings and gates and of the high value of the constituent materials. However, varying the notice to stop short of removing such materials would not remedy the breach or the injury to amenity. Parts of the wall, railings and gates would remain on site, albeit in a dismantled state. I am also mindful that enforcement action is meant to be remedial not punitive, and that some storage of building materials is likely to be incidental to the enjoyment of the dwelling as such. Even so, varying step (iii) to reflect this, for example by requiring the salvaged items to be kept in a tidy manner, would serve to create uncertainty. This is because whether the notice had been complied with would then rest on a subjective judgement.
29. Therefore, I find that the requirements of the notice are not excessive for their purpose and the appeal on ground (f) must fail.

**Ground (g) appeal**

30. The ground of appeal is that the time for compliance is unreasonably short.

31. Although the Council referred to the time which had elapsed since the notice was issued, that is not a relevant matter in terms of determining the reasonableness of the period for compliance after the notice takes effect. This is because the appellant is entitled to assume that his appeal will have a successful outcome.
32. I am mindful that the appellant wishes to ensure that the remedial works are undertaken to a high standard. Sourcing and engaging a reputable builder, together with waiting for them to become available, may take some time. Although the remedial works are relatively small in scale and reasonably straightforward, carefully carrying out such works to salvage as much of the materials as possible is also likely to lengthen their duration. In practice therefore, a two month compliance period is likely to give the appellant little time in which to arrange for the required works to be undertaken and have them carried out.
33. On the other hand, no firm evidence was supplied to indicate that there was a significant shortage of suitable building contractors in the area. Furthermore, whilst the appellant might not be in residence at the property all the time and he is conscious of personal security, the remedial works would not have an effect on the interior of the dwelling. As a result, it is unlikely that the appellant would need to be present for any significant periods whilst the works were carried out. Measures could be taken for oversight of the works and to properly secure the site for their duration. Consequently, extending the compliance period to six months is likely to unduly prolong the planning harm caused by the breach.
34. Taking all the above matters into account, I find that a four month compliance period would strike an appropriate balance between remedying the planning harm, whilst minimising the burden placed on the appellant and acting proportionately in terms of his Human Rights. It would also afford the appellant a further opportunity to discuss alternative frontage boundary treatments with the Council and to obtain any necessary permissions. It might also then be possible to undertake any permitted works to the frontage immediately following the remedial works, thereby minimising the disruption caused to the appellant and enabling salvaged materials to be re-used as far as practicable.
35. Therefore, I shall vary the notice accordingly and to this limited extent the ground (g) appeal succeeds.

### **Formal Decision**

36. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by in paragraph 5 the deletion of 2 months and the substitution of 4 months for the period for compliance. Subject to this variation the enforcement notice is upheld.

*Stephen Hawkins*

INSPECTOR