



Appeal Decision

Site visit made on 12 August 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd September 2020

Appeal Ref: APP/B5480/C/19/3227685

110 Lower Bedfords Road, Romford RM1 4DQ

- 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 Sakib Ali Talib against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 3 April 2019.
- The breach of planning control as alleged in the notice is Without first gaining planning permission, the placement of two steel haulage containers and the construction of over-height side and front boundary fences, walls and gates.
- The requirements of the notice are (i) Remove the two metal haulage containers; (ii) Lower all side boundary fences and walls to a height no greater than 2 metres; and (iii) Lower the front boundary walls, including all wrought iron fittings, and all front boundary gates to a height no greater than 1 metre; and (iv) Remove all equipment and machinery brought onto the land and all waste materials in compliance with requirements (i) to (iii) above.
- The period for compliance with the requirements is ONE MONTH for Step (i) and TWO MONTHS for Steps (ii), (iii) and (iv).
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matter

1. The appeal is lodged on grounds which include (a) and (f). Section 173(3) of the Act says an enforcement notice shall specify steps in order to achieve wholly or partly, any of the purposes set out in Section 173(4). These include, remedying the breach by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land.
2. The alternative scheme advanced by the appellant as part of the ground (f) appeal (Drawing GA300 – Proposed Front, dated March 2018) is neither for the retention of what is built nor does it benefit from planning permission. Accordingly, in order to give proper consideration to this alternative I need to deal with it under ground (a) and amongst other things consider whether this outcome could be achieved by granting planning permission “in relation to the whole or any part” of the matters alleged in the notice, either with or without conditions.

The appeal on ground (d)

3. The ground of appeal is that at the date when the notice was issued no enforcement action could be taken. In order to succeed on this ground it would be necessary to show that the development the subject of the notice had been substantially completed four years before the notice was issued.
4. In support of this ground the appellant has provided an invoice for the gates which is dated October 2014. He has also provided Google Street View images from the same time. These photographs appear to show the front boundary wall under construction and the two containers in their present position.
5. The enforcement notice to which this appeal relates was issued on 3 April 2019. This is more than four years after the date of the photographic evidence provided. However even if it can be said that the subject wall was substantially completed in October 2014, it is material that the Council previously purported to take enforcement action in relation to this matter through the issue of a notice on 13 February 2018. This notice was appealed, and though found to be a nullity by the Inspector at the time¹, was issued within four years of what the appellant claims to be the material date, that is October 2014.
6. S171B(4)(b) of the Act provides that if within the appropriate 4 year period the Council have taken or "purported to take" enforcement action in respect of a breach of planning control they have a further 4 years in which to issue a subsequent notice, provided that the first was not already out of time and the matter constituted a breach of planning control. It may be deemed that the Council "purported" to take action where it issued a defective notice which was quashed on a validity or nullity point.
7. The appellant argues that this 'second bite' provision would be unjustified when the Council failed to serve a proper notice. However, such an approach would unnecessarily restrict the purpose of s171B(4), which is to 'stop the clock' where LPAs have issued a faulty notice.
8. Therefore when taking into account the previous purported enforcement action by the Council, the appellant has not provided evidence, on the balance of probability, that the alleged developments were immune from enforcement due to the passage of time. The ground (d) appeal therefore fails.

The appeal on ground (a)

9. The appeal is that planning permission should be granted. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - The effect of the proposal on the openness of the Green Belt;
 - The effect of the development on the character and appearance of the wider area;
 - If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by

¹ Ref APP/B5480/D/18/3198205

other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

10. Paragraph 133 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. Paragraph 145 establishes that new buildings within the Green Belt are 'inappropriate' unless, amongst other things, it involves the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
11. It is undisputed that the previous front boundary wall comprised a structure, some 0.9 metres in height, with a series of six pillars at a height of 1.8 metres. The new front boundary structure, as built, comprises a combination of wall, pillars and railings with solid metal gates. The structure is undisputed to have a maximum height of some 2.6 metres. The height of the original side fencing has been confirmed by the appellant as 1.8 metres. The present height of side boundaries appears to exceed 2 metres in a number of locations.
12. A "building" is defined in s336 of the Act as including any structure or erection. The metal haulage containers and new fences, walls and gates subject to the notice would constitute structures and, as new buildings or replacement buildings that would, in my view, be materially larger than what was there before, would not be encompassed by any of the Framework paragraph 145 exceptions. Indeed there have been no representations from the appellant as to why the development would not constitute 'inappropriate' development.
13. This appeal follows a previous refusal of planning permission by the Council for the retention of a wall to front and side elevations. This decision was appealed but was subsequently dismissed in April 2016². The development in that case was described as including a 1.8m – 2.0 metre high brick wall along the frontage and west side of the property, topped by railings; and solid iron gates in excess 2.5 metres in height.
14. The Inspector, in that case, found the development to be inappropriate development, also that the new boundary treatments had a considerable effect on the openness of the Green Belt, with the height and solidity of the frontage in particular closing off views into and through the site, whilst presenting an intimidating appearance to the passer by. He concluded that the boundary treatments as a whole create an overbearing sense of enclosure to the property that reduces openness and is thereby contrary to one of the principal objectives of the Green Belt.
15. From the appellant's representations it would appear that the key difference between that structure, and the one which is sought for retention in this case, is the lowering of the front wall in the mid-section. Notwithstanding this, it was apparent from my visit that the height of the section of the wall in question had been raised once again, such that its form is currently comparable with that refused by the previous Inspector. From my observations of the front boundary structure in particular, during my visit, I concur with the aforementioned findings of the previous Inspector.

² Ref APP/B5480/D/15/3140725

16. Furthermore even with the modifications to the mid-section, it seems to me that the reduction in scale both in terms of width and depth would be relatively limited. The structure would continue to result in an overbearing sense of enclosure.
17. I acknowledge that there appears to have been a tall conifer hedge in place on the inside of the original front boundary that no longer exists. I recognise that this feature would have likely restricted visibility over the site and by its nature resulted in some impact on openness. I give some weight to this consideration, however the replacement front boundary draws the eye to a greater degree as a significantly more solid and imposing feature. For this reason, and when considering that the fundamental aim of Green Belt policy is to prevent urban sprawl, the net impact of the development remains that it reduces the sense of openness of the Green Belt in visual terms.
18. The side boundary walls and fencing are tall and contribute to a strong sense of enclosure, albeit when viewed from inside the plot. In places the maximum height of these boundaries appeared to exceed 2 metres. When considering the length of the boundaries involved I consider this to represent a material increase to the original height of the side fencing, confirmed by the appellant to have been 1.8 metres, and therefore to Green Belt openness. The requirement in the notice to lower side boundary fences and walls to a maximum height of 2 metres therefore appears to be reasonable. I note that there is no objection from appellant to compliance with paragraph 5 (ii) of the notice, where there is an exceedance of this height.
19. The containers inherently take up space that was previously open. There is therefore harm to openness in spatial terms. Also despite a degree of screening from adjacent trees, the containers are visible from the adjacent public highway. There is therefore harm to openness in visual terms.
20. I conclude that the development would be in conflict with the objectives of the Framework. Policy DC45 of the Havering Core Strategy and Development Control Policies Development Plan Document 2008 (CS) sets out the Council's policy on appropriate development in the Green Belt. The development would not accord with the criteria set out in the policy for appropriate development. It is therefore in conflict with this policy. However the policy wording is inconsistent with that of the more recent Framework and should therefore be regarded as not up to date. I therefore attach only very limited weight to the conflict with the Council's policy. This does not however overcome my findings with regard to conflict with national Green Belt policy.

Character and Appearance

21. The appeal site comprises a large plot, and in spatial terms is typical of the low density residential development found in the immediately surrounding area. The street scene is verdant with the opposite side of the road marking the edge of Bedfords Country Park. The boundaries of nearby properties tend to be characterised by enclosures that are more recessive in appearance, softened by planting. In this context the front boundary that is the subject of the notice, though set back from the highway, because of its height, decoration and the solidity of the metal gates, appears strident and excessively ornate.
22. Whilst there are some tall and imposing boundary structures in the wider area relating to different land uses, the frontage in this case appears obtrusive and

incongruous in its immediate surroundings. It introduces an urbanising, harder edge, that draws the eye and is at odds with the softer character of nearby boundaries. It therefore results in harm to that character. Whilst I acknowledge that there is more built up development some distance to the east and west, this is not near enough to the site to affect my findings in this case. Neither do the purported alterations to the mid-section of the wall alter my observations.

23. The metal containers have an industrial and functional appearance, which is incongruous with the softer character of the surrounding area. As such they are harmful to that character, serving to exacerbate the aforementioned identified harm.
24. I conclude that the development results in harm to the character and appearance of the area. It would be in conflict with Policy DC61 of the CS, Policies 7.4, 7.5 and 7.6 of the London Plan 2016 and with the Framework insofar as they seek to maintain and improve the character and appearance of the area, respond to distinctive patterns of development and secure high quality design.

Other considerations

25. The appellant has explained that his property has been the subject of a number of break-ins and thefts. His objective is therefore to retain the relatively tall boundary enclosures in order to provide greater security, whilst allowing for surveillance from the adjacent highway. Whilst I accept that lowering the front boundary structure would potentially make it easier to gain unauthorised access to the property, I concur with the previous Inspector that if such a scale of development was replicated too often, it would serve to undermine the key open characteristics of the Green Belt.
26. Furthermore, I am not persuaded that other ways of deterring unwelcome access onto the property, for example through the use of security cameras, would not be available. Additionally, in the event that the appeal to retain the existing front boundary structure is unsuccessful, I note that the appellant is amenable to lowering the front wall considerably, and does not therefore necessarily say that it is vital to retain a uniformly high front boundary enclosure.
27. I therefore concur with the previous Inspector that this matter attracts only limited weight.
28. The appellant seeks the temporary retention of the metal storage containers, so as to facilitate the completion of building works on the site, whilst keeping the site tidy. However, the containers appear to have been present for a significant period already. Furthermore the request to extend the compliance period to six months was made over a year ago. Therefore, in my view, the justification for the retention of the containers for a longer period is not compelling and, again, attracts limited weight in the planning balance.

Green Belt balance

29. National planning policy attaches great importance to Green Belts. Therefore when considering any planning application substantial weight should be given to any harm to the Green Belt. I have found harm to the Green Belt by way of inappropriateness and to its openness. I have also found harm to the

character and appearance of the wider area. I have balanced this against the other considerations referred to above. However for the reasons given, having also had regard to all other points raised by the appellant, they do not clearly outweigh the harm identified.

30. The very special circumstances necessary to justify the development have not therefore been demonstrated. Consequently the proposed development conflicts with the Green Belt protection aims of the Framework and with Policy DC45 of the CS. The ground (a) appeal therefore fails in respect of the deemed planning application.

The Alternative Scheme

31. In the event that the ground (a) appeal is unsuccessful and planning permission is refused in relation to the deemed planning application for the front boundary enclosure, the appellant has proposed an alternative scheme which comprises amendments to the design of this part of the development.
32. These amendments would include shortening the height of the wall to a maximum height of 1 metre and the intervening pillars and entrance gates to a maximum height of 1.8 metres. The ornate railings attached to the top of the wall would be omitted from the scheme.
33. It seems to me that this proposal can reasonably be regarded as part of the scheme that constitutes the breach of planning control. I consider that the form of the proposed amendments, when taking into account the design of the original front boundary, and despite the greater number of pillars, would not be materially larger than the original and could, in principle, overcome the aforementioned harm to Green Belt openness and the character of the area.
34. However insufficient detail of the design of the proposed gates has been provided. I consider that the retention of solid metal gates would be unacceptable in design terms, for the reason that I have set out above. If the gates were retained in solid form, there would continue to be harm to the openness of the Green Belt and to the character of the area. However, it seems to me that if the gates were redesigned then, together with the suggested reduction in the overall height of the structure, a successful scheme may be possible.
35. Therefore, whilst I do not have sufficient detail to approve the amended drawing, I consider that there would be justification to lengthen the time for compliance with the enforcement notice in order to provide a reasonable opportunity for the appellant to make a planning application accordingly, and for the Council to consider the design of an amended scheme. Notwithstanding this, because the detail of the scheme is insufficient at present, the ground (a) appeal fails with regard the alternative scheme currently before me.

The appeal on ground (f)

36. The ground of appeal is that the steps required by the notice to be taken are excessive. The appellant's case on ground (f) concerns the submission of the amended front boundary scheme and the retention of the metal containers for a longer period. I have dealt with both of these points in the aforementioned considerations, having explained why both would be unsatisfactory based on the information currently before me. The ground (f) appeal therefore fails.

The appeal on ground (g)

37. The appellant seeks to extend the compliance period to six months. I have set out above why I consider that this would not be appropriate in relation to the metal containers.
38. However I am persuaded that there would be justification to lengthen the time for compliance with the enforcement notice in relation to the boundary fences, walls and gates from two months to six months. I consider that this would provide a reasonable opportunity for the appellant to make a planning application to the Council for an alternative scheme and for any necessary amendments to be made, should the application prove successful. The ground (g) appeal therefore succeeds to this limited extent.

Conclusion

39. For the reasons given above I conclude that the appeals on grounds (a), (d) and (f) should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Formal Decision

40. It is directed that the enforcement notice is varied by deleting the words "TWO MONTHS" in paragraph 6 of the notice and substituting the words "SIX MONTHS" instead.
41. Subject to this 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.

Roy Merrett

INSPECTOR