

UPHOLD



Appeal Decision

Site visit made on 12 december 2005

by A J J Street MA(Oxon) DipTP MRTPI

an Inspector appointed by the First Secretary of State

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Date
26 JAN 2006

Appeal Ref: APP/B5480/C/05/2001781

Land at 51 Osborne Road, Hornchurch, Essex, RM11 1EX

- 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 M Duignam against an enforcement notice issued by Havering London Borough Council.
- The Council's reference is ENF1234.
- The notice was issued on 25 February 2005.
- The breach of planning control as alleged in the notice is without planning permission the erection of a two metre high close board fence and gate adjacent to a highway and erection of two garden sheds within 20 metres of the highway.
- The requirements of the notice are: (i) Remove from the land the fence and sheds and return the land to its original condition before the unauthorised development took place; and (ii) Remove from the land all materials, equipment and rubble arising from compliance with (i) above.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in sections 174(a), (c), (f) and (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed, the enforcement notice is upheld with variations and planning permission is refused on the deemed application.

PROCEDURAL MATTER

1. Following my inspection I sought the views of the parties on the terms of the enforcement notice. I have taken account of the representations received.

BACKGROUND

2. The appeal site lies in a pleasant residential area of Hornchurch. No 51 Osborne Road is a substantial detached house on the north side of the road. The notice is concerned with the rear garden of the house which has a frontage to Thorncroft, a road of more recent detached and semi-detached dwellings with "open plan" front gardens. Much of the rear garden of No 51 lies between Nos 38 and 40 Thorncroft, two detached bungalows.
3. The new fencing that is the part subject of the notice is about two metres high. It runs along the back of the footway on the southern side of Thorncroft, and down the side boundaries of Nos 38 and 40 Thorncroft to end very roughly parallel with the front elevations of those dwellings. There is a two metre high close board double gate mid way along the length of fencing fronting Thorncroft.

4. The two sheds that are the part subject of the notice are sited on the east side of the rear garden towards the northern end of the garden. One is about 5.0 metres by 3.5 metres in ground plan, the other about 3.5 metres square. They are both about 2.5 metres high and one has a low pitched roof while the other has a flat roof.

INSPECTOR'S REASONING

The Appeal Against The Notice On Ground (c)

5. This ground of appeal relates to the fencing only. The appeal is on the basis that first, the new fencing is lower than that which formerly existed on the land and second, that the works are permitted by the provisions of Part 2 Class A 1 (c) of the second Schedule to the GPDO.
6. In my view these submissions are not soundly based. The height of the old fence is irrelevant to a ground (c) appeal. Class A 1 (c) relates to the improvement, alteration or maintenance of existing fencing. The fence that is the subject of the notice is new fencing not existing fencing. It has been erected for fewer than 4 years. The appeal on ground (c) will fail.

The Appeal Against The Notice On Ground (a)

7. Under this heading there are two main issues of planning merit. These concern: first, the impact of the new fence and sheds on the appearance and character of the road Thorncroft; second, the weight to be attached to other matters advanced by the Appellant in support of the grant of planning permission.
8. The development plan for the area is the Council's Unitary Development Plan (the UDP). Policy ENV1 is relevant. It says, among other things, that all new development should be satisfactorily located and compatible with the surrounding area.
9. Regarding the first issue I saw at my inspection that Thorncroft is an attractive residential road with front garden areas of open aspect. The new fencing at the appeal site has been erected right up to the line of the back of the footway and obtrudes between the "open plan" front gardens of Nos 38 and 40. The fencing appears of substantial height in its open setting and it juts out very markedly into the wide area of front gardens of open character. There is nothing like this situation elsewhere in the street and I consider the fencing to be an extremely obtrusive, incongruous and alien feature in its setting. The presence of the sheds is also damaging to the appearance and character of the area. They are sizeable structures that are clearly visible above the fencing. They sit well forward of the bungalows on either side and obtrude into the open area along the roadway. Like the fencing they are uniquely obtrusive in the street scene. There are other stretches of fencing in Thorncroft and other sheds visible from that road, but they are all much less obtrusive than the development that is the subject of the notice. I consider that the appeal developments cause demonstrable harm to the appearance and character of Thorncroft and that they are not in accord with the provisions of the development plan.
10. These very weighty concerns could not be remedied by the imposition of conditions on a planning permission. Painting the sheds and fencing a different colour would make little difference to their impact. They could not be screened effectively where they are.

11. Turning to the second issue it is said that the new fencing replaces earlier fencing that had been higher. I attach little weight to this point. The earlier fencing had been in decay and the garden overgrown. All that has gone and the new development has to be considered on its own merits.
12. I accept that there is a current domestic need for the sheds. But they do not have to be in their present very obtrusive location in the garden. There seems to be no special need for the sheds to be sited such a long way from the house. Certainly it is common to have sheds in rear gardens, but this rear garden has an unusual location and the parts of it most distant from the house have, in effect, a conspicuous "open plan" setting. I attach little weight to the points raised by the Appellant on these matters.
13. The Appellant says that the tall fence is needed to provide security and privacy for his rear garden. I attach only limited weight to these considerations in this case. Given the location of the house in a pleasant residential area and the position of the bottom of the garden very close to the bungalows Nos 38 and 40 I am not persuaded that it is necessary to have such tall and forbidding fencing around the bottom of the garden to provide reasonable security for the house. It is a long rear garden too and I am sure that privacy could be secured for most of it without the need for such fencing. In my view reasonable security could be provided by a much lower fence and security and privacy could be enhanced by other means, including additional landscaping.
14. The Appellant points out that the occupiers of Nos 38 and 40 support his case. But other residents of Thorncroft are opposed to both the fencing and the sheds. In the circumstances the views expressed by local people do not change my analysis.
15. Weighing all of the representations of planning merit I conclude that allowing the appeal on ground (a) would perpetuate a situation in which demonstrable harm is being caused to the appearance and character of Thorncroft and that these weighty objections outweigh the matters supporting the grant of planning permission. The appeal on ground (a) fails and no planning permission is to be granted.

The Appeal Against The Notice On Ground (f)

16. The Appellant's representations under this heading in respect of the sheds largely relate to matters of planning merit. I have already considered them under the ground (a) appeal. However I consider the requirement to remove the sheds from the land – that is from the whole property No 51 - to be excessive. The notice is aimed at protecting amenity. In my view the serious harm to amenity arising from the presence of the sheds could be alleviated to a satisfactory extent by the re-siting of the sheds to positions away from the Thorncroft end of the garden and behind the line of the main front wall of No 38 Thorncroft. I shall vary the requirements of the notice accordingly.
17. I consider the requirement to remove the fence to be excessive also. The provisions of Part 2 of Schedule 2 to the GPDO generally permit the erection of fencing up to a metre high where the fencing lies "adjacent" to a highway and up to two metres high where it is not "adjacent". In this situation I consider that, as a generality, it is excessive for the notice to require the total removal of the fence in positions where it is not "adjacent" to the highway. Likewise, where the fence does lie "adjacent" to the highway, I think it excessive, as a generality, for the notice to require more than the reduction in height of the fence to a height of not more than one metre. In this case the fencing and the gates are all of wood, apart

from the concrete bases of the fence posts. It should be a practical proposition here to reduce the height of the fencing, where such action is deemed appropriate, to a height of not more than one metre, as an alternative to simply demolishing the whole fence. Of course there may be practical difficulties, of which I am not aware, about following this approach. But it seems to me that the notice should give the Appellant the option to reduce the height of the fencing, where that is appropriate, rather than simply requiring total demolition. I shall vary the requirements of the notice on this basis.

18. It follows that I must now decide what parts of the fencing can properly be regarded as being situated "adjacent" to the highway and what parts cannot be so regarded. In my view, as a matter of fact and degree, the length of fence and the double gate erected immediately at the back of the footpath line plainly lie "adjacent" to the highway. Given the particular pattern of development in this area I find that the first two metres of the side fencing, running southwards from the line of the footway, on both sides of the garden to No 51, also lie "adjacent" to the highway.
19. The requirements of the notice say that the land should be returned to its original condition before the development took place and that all materials, equipment and rubble arising from compliance with requirement (i) should be removed from the land. I find these requirements to be either excessive, or unnecessary or too vague. It is very far from clear what is meant by returning the land to its original condition. It is not clear what is identified by the words "materials, equipment and rubble". These requirements appear to require the contents of the sheds to be removed from the land. There are no amenity reasons to justify that. I shall delete these requirements from the notice.
20. Having considered all of the representations the appeal on ground (f) succeeds to the extent set out above.

The Appeal Against The Notice On Ground (g)

21. Under this heading the Appellant indicates that if his appeal on ground (a) fails then he will need more time than the three months specified in the notice for compliance – to negotiate the re-siting of the sheds and to take steps to safeguard the security and privacy of the back garden.
22. I do not consider that it would take more than three months to re-locate the sheds on the basis that I have set out above. There would be no need for negotiations with the Council about it. I am more sympathetic about the fencing however. In my view it could well take more than three months to organise and execute the option to reduce the height of the fence. I think that five months would be a reasonable period for compliance. I shall vary the notice accordingly and the appeal on ground (g) will succeed to that limited extent only.

OVERALL CONCLUSIONS

23. Having considered all of the evidence and for the reasons given above I conclude: that the appeal on ground (c) should fail; that the appeal on ground (a) should fail and that planning permission should not be granted on the deemed application; that the appeal on ground (f) should succeed to the extent set out above; and that the appeal on ground (g) should succeed to the limited extent set out above.

FORMAL DECISION

24. In exercise of the powers transferred to me I vary the notice at Section 5, "What you are required to do", by the deletion of the text of Section 5 in its entirety, apart from the heading, and the substitution therefor of the words "1. Relocate the two sheds to positions that lie on the south side of a line drawn across the land parallel with the main front wall of No 38 Thorncroft. Thereafter the sheds shall not be relocated again at any time to positions that lie to the north of a line drawn across the land parallel with the main front wall of No 38 Thorncroft, without the prior written approval of the Borough Council. 2. Either (a) demolish the lengths of fence and the gate that abut the footway on the southern side of Thorncroft and the lengths of side fence to Nos 38 and 40 Thorncroft for a distance of two metres southwards from the footway of Thorncroft; or (b) reduce the height of the lengths of fence and the gate, that abut the footway on the southern side of Thorncroft and the lengths of side fence to Nos 38 and 40 Thorncroft for a distance of two metres southwards from the footway of Thorncroft, to a height of not greater than one metre. Time for compliance: five months." Subject to these variations I dismiss the appeal, uphold the notice as varied and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.



INSPECTOR