



Appeal Decisions

Site visit made on 30 October 2012

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 November 2012

Appeal A - Ref: APP/X5210/C/12/2177373

Appeal B - Ref: APP/X5210/C/12/2177374

2 Daleham Gardens, London, NW3 5DA.

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Alan Lyons (Appeal A) and Mrs Jane Lyons (Appeal B) against an enforcement notice issued by London Borough of Camden.
- The Council's reference is E11/0725.
- The notice was issued on 27 April 2012.
- The breach of planning control as alleged in the notice is the installation of a timber trellis on existing boundary wall along Belsize Lane.
- The requirements of the notice are to completely remove the wooden fence.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered in that case.

Summary of Decision: Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Decision.

Appeals A & B - the appeal under ground (c)

1. The appeal on this ground is that there has not been a breach of planning control and in support of this the appellants' agent refers to section 55 of the Act which sets out the 'Meaning of Development'. The agent submits that the work involved in erecting the trellis did not constitute an engineering or other operation nor an operation "normally undertaken by a person carrying on business as a builder. The agent says the trellis was bought at a garden centre and erected by a landscape gardening specialist.
2. I had regard to the height and extent of the trellis, together with its location on top of a high boundary wall, at my site visit. Having regard to these factors together with its type of construction and support, I consider that its erection amounts to a building operation in its own right. Further, it is likely to have required a specialist contractor to erect it, albeit one in the business of a landscaping/gardening contractor rather than necessarily a builder, as opposed to an operation that could usually be undertaken by the house occupier. Therefore, whatever title is given to the erector, I find, as a matter of fact and degree, that the erection of the trellis fence amounts to a building or engineering operation as defined in section 55 of the Act. As such it is development which requires planning permission by virtue of section 57 and in

the absence of such permission a breach of planning control has occurred. The appeal on this ground therefore fails.

Appeal A – Appeal under ground (a) and the deemed planning application

Main Issues

3. The main issue is the effect of the timber trellis on the character and appearance of the area which form part of the Fitzjohn's and Netherhall Conservation Area.

Reasons

4. As background, the site lies on the corner of Daleham Gardens and Belsize Lane with the main aspect of the house being on the former frontage. There is a change in level between the side and rear of the property and its garden to the Lane, and this is enclosed by a brick wall about 2m high. On the Belsize Lane frontage the wall is surmounted by the timber trellis the subject of the notice. In total the trellis is about 60m long and of two heights: 1.2m and 1.7m. The trellis is formed by strips of wood laid horizontally with a minimal gap in between. A photograph submitted by the appellant shows that previously there was an older trellis fence with a more open criss-cross pattern along part of this frontage.
5. In terms of the character and appearance of the area, I observed at my site visit, many examples of enclosures along the frontages of properties with boundary walls surmounted by hedges or fences. My attention was drawn to other examples in the appellant's representations. Further, letters received from local residents make reference to the previous fence and generally give support for the one now erected.
6. However, it appears to me that the trellis fence erected is of a considerable length and height and is a prominent feature in this part of the Conservation Area. It has a harmful stark visual impact which cannot be said to conserve or enhance the special character or appearance of the area. This makes the work as carried out in conflict with policy CS14 of the Council's Core Strategy and policies DP24 and DP25 of the Development Policies 2010 (DPD).
7. Much of this impact is caused by the individual wooden slats being very close together making it appear 'solid'. In this pattern, foliage planted on the garden side of the trellis would have difficulty in penetrating the barrier. The appellant describes the landscaping that has been undertaken but at my site visit I saw few occasions where the plants had penetrated through the trellis and consequently I do not agree that it had the 'transparency' and landscaped form that the appellant's agent suggests.
8. In order to help alleviate the visual impact while still retaining the function of the screen to provide privacy to the house and garden, the appellant suggests that some of the intervening slats could be removed to reduce its solidity and then would allow the planting undertaken to grow through.
9. In my judgement, the removal of every third vertical slat would materially reduce the structure's solid visual impact and allow the planting to grow through and flourish in the frontage screen. With this modification its visual impact would be similar to the other boundary features as I have mentioned above and the screen would then respect the character of the area. The Council are

concerned that such alteration would give the fence an 'unfinished' appearance, but I do not agree. In my view, such an altered fence would have a similar visual appearance as an interwoven fence as the Council suggest and would be more likely to accommodate the landscaping and result in a greener form of enclosure.

10. I therefore find that while the trellis fence as erected is harmful, it is capable of being modified by work required by conditions to make its visual impact appropriate to the character and appearance of the area. In detail, I will impose a condition to require that within six months, every third slat within the whole trellis fence, as measured horizontally, shall be removed and the fence shall be retained in that form and no other components shall be added to the fence subsequently. Further, I will impose a condition to the effect that a landscaping scheme, based on the planting scheme submitted with the appeal documents, is submitted to and agreed with the Council, and carried out within a specific period.
11. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) do not therefore need to be considered.

Appeal B

12. In relation to Appeal B, it is unnecessary for me to consider whether the appeals on grounds (f) and/or (g) should succeed as the enforcement notice will be quashed in consequence of my decision to allow Appeal A on ground (a). I shall, therefore, take no further action on these ground(s) of appeal.

Decisions

Appeal A - Ref: APP/X5210/C/12/2177373

13. The appeal is allowed, I direct that the enforcement notice is quashed and 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 already carried out, namely the installation of a timber trellis on existing boundary wall along Belsize Lane, on land at 2 Daleham Gardens, London, NW3 5DA, as referred to in the notice, subject to the following conditions:
 - (1) Within six months of the date of this decision, the trellis fence shall be altered by the removal of every third horizontal slat, measured vertically from ground level. The trellis fence shall be retained in this form thereafter and no other slat or component of the fence shall be added subsequently.
 - (2) A landscaping scheme, including details of the planting already undertaken, shall be submitted to the Council within six months of the date of this decision. The scheme approved shall be implemented within a further period of six months from the date approved by the Council. If within a period of two years from the date of the approval, any plant/shrub, or any plant/shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another plant/shrub of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.

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14. I take no further action in respect of this appeal.

David Murray

INSPECTOR