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Planning Department
London Borough of Camden
5 Pancras Square
London
N1C 4AG

Our ref: 9183

10 October 2019

Dear Sir

Application for a Certificate of Lawfulness Application for side fencing at 7 Oakhill Avenue, Hampstead, London, NW3 7RD

This statement is written in support of the application for a certificate of lawfulness application submitted to the London Borough of Camden for 7 Oakhill Avenue, Hampstead, London, NW3 7RD ('the Site'). The proposal is for the alteration to the front section of the existing side fencing that lines the driveway, reducing the height of the fence to 1m adjacent to the highway for the first 70-80cm of length.

This application seeks to clearly demonstrate that the side fencing proposed at the residential dwelling is lawful, in accordance with section 192 of the Town and Country Planning Act 1990 and Schedule 2, Part 2, Class A, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Supporting Information

The following documents are submitted as part of the certification submission in support of the application:

- Existing Block Plan (2000)
- Site Location Plan (0500)
- Existing North Side Elevation (3002)
- Existing South Side Elevation (3000)
- Proposed North Side Elevation (3003)
- Proposed South Side Elevation (3001)

The Site and Surrounding Area

The Site is home to a detached residential dwellinghouse with a front driveway. The existing side boundary of the driveway is lined by close-board timber fencing at 1.5-1.7m in height. The proposed fencing will reduce the height of the section of each side fence closest to the highway (removal of front corners at a 45-degree angle). The fence shall measure 1m in height adjacent to the highway, with the remainder of the fence increasing in height to 1.5 – 1.7m above ground-level (see the proposed plans for clarity). Ground level is measured level with the highway (heights annotated on plans).



Permitted Development

Schedule 2, Part 2, Class A, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out the criteria and associated conditions for minor operations forming gates, fences, walls etc.

Schedule 2, Part 2, Class A, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

" A. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Development not permitted

A.1 Development is not permitted by Class A if—

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—

[(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;]

(ii) in any other case, 1 metre above ground level;

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building."

Comments

Based on planning experience and appeal case law a fence within 1m of the highway (this includes the associated footway next to the road) needs to be 1m or less in height in order to be Permitted Development.

On the face of it, a fence that is not adjacent to the highway, can be up to 2m in height. The proposed side fencing would comply with these criteria with the fence measuring 1m in height adjacent to the highway and increasing to 1.5-1.7m (not exceeding the maximum height of 2m elsewhere). Although not considered within the Permitted Development criteria above, the proposed removal of the front corners at a 45-degree angle allows for no impact on the visual amenity of the site and no impact on visibility for pedestrians and highway users.

There are examples of planning appeal decisions that set out the accepted approach to boundary treatment regarding its location and height under permitted development allowances. This is set out below.



Appeal Case Law

A planning appeal decision (Appeal Reference: APP/C/95/J2210/637912) has confirmed case law, stating that a wall or means of enclosure, in this instance a fence, is not considered 'adjacent' to the highway 'running back into the site'. A side wall cannot be considered 'adjacent' to the highway when facing side-on and not adjoining the front boundary treatment – a stand-alone structure. The appeal is referenced below (See Appendix for copy of Appeal Decision):

Paragraph 8. *"The Council agreed... that as some point a wall or fence exceeding 1m in height running back into the site could no longer be considered to be adjacent to the highway".*

Paragraph 9. *"I find as a matter of fact and degree that only part of the walls are adjacent to the highway and that their height at this point is below 1 meter above ground level. Since the remainder of the walls, brick piers or gates (fencing in this instance) do not exceed 2 meters above ground level I conclude that the development which has taken place was permitted by Class A to Part 2 of Schedule 2" of the GPDO.*

The Inspector highlighted that the Council agreed that a wall running back into a site could not be considered "adjacent". The Inspector added that there was no barrier to visibility and the walls and gates were set back sufficiently from the road (in this instance fencing) for them not to be perceived by passers-by as marking the boundary of the appellant's land.

Accordingly, the proposed certificate application should be assessed in light of this case law and its compliance with Permitted Development legislation.

Conclusion

Therefore, based on the compliance with the permitted development legislation and case law, it is considered that it has been clearly demonstrated that the proposed side fencing, with the proposed alteration to 1m height adjacent to the highway, is lawful, in accordance with section 192 of the Town and Country Planning Act 1990 and Schedule 2, Part 2, Class A, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

We welcome the Council's consideration of this information and trust that all the enclosed allows you to successfully register and progress the application positively. Accordingly, we respectfully request that this application for a proposed lawful development certificate is approved, in line with the statutory timescales.

Yours sincerely
BELL CORNWELL LLP



SAFFRON FROST
Planner



sfrost@bell-cornwell.co.uk



APPENDIX

- Appeal Decision Notice attached below for Appeal Reference: APP/C/95/J2210/637912.



The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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BSF Planning Consultants
67a Castle Street
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Kent
CT1 2PY

Your Reference:
P1455
Council Reference:
DAS/ENF/940428/NC
Our Reference:
APP/C/95/J2210/637912
Date:

18 DEC 95

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEAL BY MR G W MATTHEWS
LAND AT SAMUEL COURT, BEECH HILL, BRIDGE, CANTERBURY, KENT

1. I have been appointed by the Secretary of State for the Environment to determine your client's appeal against an enforcement notice issued by the Canterbury City Council concerning the above mentioned land. I held a hearing into the appeal on 14 November 1995.

2. At the inquiry, an application was made by Mr G W Matthews for an award of costs against the Canterbury City Council. This is the subject of a separate letter.

THE NOTICE

3. (1) The notice was issued on 10 March 1995.

(2) The breach of planning control as alleged in the notice is without planning permission, the erection of two walls exceeding 1 metre in height, and the erection of two gates exceeding 1 metre in height, as shown marked in green on the plan attached to the notice.

(3) The requirements of the notice are to reduce the height of the two walls to a height of not more than 1 metre and remove or replace the gates with gates not more than 1 metre in height.

(4) The period for compliance with these requirements is three months.



FOUNDATIONS OF APPEAL

4. Your client's appeal is proceeding on grounds (a), (c) and (g) as set out in section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991.

THE APPEAL ON GROUND (c)

5. On ground (c) you accepted that the operations undertaken constitute development under section 55 of the 1990 Act. You submitted that they were permitted development under Class A to Part 2 of Schedule 2 to the Town and Country Planning General Development Order 1988 (GDO). This was applicable at the time the development was carried out and provided that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure was permitted development so long as its height did not exceed 1 metre where it was adjacent to the highway, or 2 metres in any other instance.

6. The new walls are set back about 45 cm from the edge of the footway in Beech Hill. They then run at a height of no more than 87 cm into the site before curving upwards reaching a height of 1 m at a distance back from the edge of the footway of about 3.35 m on the east side of the access and 3.2 m on the west side. The higher sections of the wall do not exceed 1.66 m and continue into the site to meet two brick piers which have a height of some 1.93 m. There are a pair of solid wooden gates about 1.78 m in height attached to the piers the centre point of which is set back some 7.16 m from the footway.

7. The Council contended that the meaning of word "adjacent" should be construed having regard to the purpose of the GDO and would depend on the particular circumstances of any given case. The limitation on the development permitted by Class A set out in Class A.1 (a) makes specific reference to "a highway used by vehicular traffic" and I believe that it is mainly aimed at highway safety interests. The point at which the walls exceed 1 m is clearly beyond the distance at which they could obstruct the visibility sight lines recommended by Planning Policy Guidance:Transport (PPG13) and I satisfied that the development would not materially affect highway safety.

8. The Council agreed at the hearing that at some point a wall or fence exceeding 1 m in height running back into the site could no longer be considered to be adjacent to the highway. However, the Council submitted that in this case the walls and gates served the purpose of marking the boundary to the Appellant's land and the gates were designed to provide the entrance to a private area from the public domain. Although visible from the public highway I consider that the distance that the higher part of walls and gates are set back from the road is sufficient for them not to be perceived by passers-by as marking the boundary of the Appellant's land.

9. I find as a matter of fact and degree that only part of the walls are adjacent to the highway and that their height at this

point is below 1 metre above ground level. Since the remainder of the walls, brick piers, or gates do not exceed 2 metres above ground level I conclude that the development which has taken place was permitted by Class A to Part 2 of Schedule 2 of the GDO.

10. The appeal succeeds on ground (c) and the notice will be quashed. The appeal on grounds (a) and (g) and the application deemed to have been made under S177(5) of the amended Act do not therefore need to be considered.

11. In reaching my conclusions on the grounds of appeal I have taken into account all the matters raised in the representations but none outweighs the considerations that have led me to my decision.


FORMAL DECISION

12. For the above reasons, and in exercise of the powers transferred to me, I allow this appeal, and direct that the enforcement notice be quashed.

RIGHTS OF APPEAL AGAINST DECISION

13. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against my decision to the High Court are enclosed for those concerned.

Yours faithfully



MRS C W HOARE LLB Solicitor
Inspector

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APPEARANCES

FOR THE APPELLANT

- | | |
|-------------------------|--|
| Mr D Jarman BA MA MRTPI | - BSF Planning Consultants
67a Castle Street,
Canterbury, Kent |
| Mr G W Matthews | - Appellant |
| Mrs A Matthews | - Appellant's wife |

FOR THE LOCAL PLANNING AUTHORITY

- | | |
|---------------------|---|
| Mr D Smith BA MRTPI | - Senior Planning Officer,
Canterbury City Council |
| Ms Nicola Hudson | - Enforcement Officer,
Canterbury City Council |

INTERESTED PERSONS

- | | |
|-------------------|---|
| Dr W Lloyd Hughes | - Beech Cottage, Beech
Hill, Bridge, Canterbury
CT4 SAU |
|-------------------|---|

DOCUMENTS

- | | |
|------------|---|
| Document 1 | - List of persons present at the Inquiry. |
| Document 2 | - Copy letter sent by the Council
notifying people of the hearing and
circulation list. |
| Document 3 | - Appendices 1-5 inclusive attached to
the Appellant's statement. |
| Document 4 | - Appendices A-B inclusive attached to
the Council's statement. |
| Document 5 | - Bundle of 4 letters sent by interested
persons. |

PLANS

Plan A - Enforcement notice plan.

PHOTOGRAPHS

Photograph 1 (1-3) - Bundle of 3 photographs attached to the Appellant's statement.

Photograph 2 (1-6) - Bundle of 6 photographs attached to the Council's statement.



The Planning Inspectorate

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BSF Planning Consultants
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Canterbury
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Your Ref: P1455
Our Ref: APP/C/95/J2210/637912

Date: 18 DEC 95

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 174 & SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPLICATION FOR COSTS BY MR G W MATTHEWS

1. I refer to the application for an award of costs against the Canterbury City Council which was made at the hearing held at the Council Offices, Military Road, Canterbury on 14 November 1995. The hearing was in connection with an appeal against an enforcement notice alleging without planning permission, the erection of two walls exceeding 1 metre in height, and the erection of two gates exceeding 1 metre in height. A copy of my appeal decision letter is enclosed.
2. In support of your application you referred to Circular 8/93 Annex 3 paragraphs 12-19 which set out examples of the unreasonable refusal of planning permission and paragraphs 21-25 which relate to the unreasonable issue of an enforcement notice.
3. Paragraph 21 advises that decisions to award costs in enforcement appeal proceedings are based on substantially the same principles as for planning appeals. Paragraph 14 states that authorities should not seek to control the detailed design of buildings unless the sensitive character of the setting for the development justifies it. Guidance on design control is stated in Annex A to PPG1. You submitted that the Council had sought to exercise a degree of control beyond what was appropriate for the circumstances of the location concerned. The Council had tried to impart a special character to the area which it did not possess and to control design to an unreasonable degree. There was little difference between the walls and gates which had been erected and those which would result from the requirements of the notice.

4. Paragraph 15 states that local opposition to a proposal is not, by itself, a reasonable ground for the refusal of a planning application, unless that opposition is founded on valid planning reasons which are supported by substantial evidence. You contended that the Council did not have valid planning reasons for its decision to take enforcement action. The local residents had drawn on matters that were not planning considerations. There had been a history of objections raised by local residents to the earlier planning applications and the views of local residents had been given more weight than could be justified.

5. Paragraph 22 advises that when using their discretionary powers, planning authorities will be expected to exercise care to ensure that their decision to issue an enforcement notice takes full account of relevant judicial authority, the Government's guidance in PPG18 and well-publicised appeal decisions. You stated that the Council had not shown support for taking enforcement action either from judicial authority or from appeal decisions.

6. Paragraph 24 indicates that it will generally be regarded as unreasonable for a planning authority to issue an enforcement notice solely to remedy the absence of a valid planning permission, if it is concluded, on an enforcement appeal to the Secretary of State, that there is no significant planning objection to the breach of control alleged in the enforcement notice. The Council had not shown that they had reasonable grounds for concluding that the breach of control would unacceptably affect public amenity.

7. In response, the LPA referred to Circular 8/93 Annex 3 paragraph 14. The Council had considered the impact of the development on the surrounding area. The degree of control which the Council had sought to exercise had not gone beyond what was appropriate for the circumstances of the location concerned. The Council had given evidence as to the particular characteristics of Beech Hill which had led to the decision to take enforcement action. The Council submitted that there was a significant difference between the development which had been constructed and that which was permitted under the GDO. The impact of the reduced wall and gates would be significantly less.

8. Paragraph 15 advises that planning authorities are expected to consider the views of local residents when determining a planning application. The Council had not merely given in to objections raised by third parties but had listened to the position of local residents and based their decision on the planning merits of the development.

9. Paragraph 22 states that a serious misunderstanding of clearly established principles of law is likely to be regarded as unreasonable conduct. However, it does not follow that, in any particular case, an authority's reliance on a legal interpretation which is not, in the event, supported by the

reasons for an appeal decision will necessarily be regarded as unreasonable. On the ground (c) appeal the Council had referred to a number of cases to assist in the interpretation of the word 'adjacent'. The scope and purpose of the GDO had been dealt with in other similar cases which the Council had mentioned. Although there had been no cases in the district which were precisely identical this was not surprising. There had been many instances where similar legal issues had been raised. There had been no conclusive legal decision on the interpretation of this part of the GDO.

10. As regards paragraph 24 the Council had shown that the development had an unacceptable impact on public amenity. Paragraph 21 advises that the availability of awards of costs, in appropriate circumstances, is not intended to inhibit planning authorities' readiness to take effective enforcement action, when it is clearly essential in the public interest.

11. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who has behaved unreasonably.

12. Circular 8/93 advises that in planning proceedings parties normally meet their own expenses and costs are awarded only when what is termed unreasonable behaviour is held to have occurred.

13. In relation to Annex 3 paragraph 14 I consider that the Council raised a fundamental objection to the height of the rear part of the walls and gates and did not merely seek to control the detailed design of the development. I do not regard the reduction in the height of the development sought by the Council as insignificant. PPG1 Annex A paragraph A1. advises that the appearance of proposed development and its relationship to its surroundings are material considerations. Whilst it was not necessary for me to reach a conclusion on the matter I believe that the Council put forward reasoned arguments to support their contention that the degree of control sought was appropriate in the particular circumstances of Beech Hill. Although aesthetic judgements are to some extent subjective I am satisfied that in issuing the notice the Council gave proper consideration to all the merits of the case.

14. As regards paragraph 15 the Council did not adopt all local objections in its reasons for issuing the notice. I do not accept that the decision to take enforcement action was taken on the grounds of local opposition alone but was based on a valid planning reason, namely, the need to safeguard the character and appearance of the surrounding area. I consider that local representations were taken into account alongside other material considerations in the proper way and that a reasonable planning objection to the development was raised.

15. In respect of paragraph 22 I am satisfied that there has been no serious misunderstanding of clearly established principles of law by the Council. Whilst I have found as a matter of fact and degree that the works carried out were permitted development I do not believe that the Council acted unreasonably in their interpretation of relevant judicial authority, PPG18 or appeal decisions.

16. As regards paragraph 24 it seems to me that the Council clearly did not issue the notice solely to "regularise" development which was otherwise considered to be acceptable on its planning merits. In my view, the Council had reasonable grounds for concluding that there had been a breach of planning control and raised a significant planning objection to the development. I consider that the planning authority behaved reasonably in exercising their discretion to take enforcement action. I therefore conclude that the application for an award of costs is not justified.

FORMAL DECISION

17. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by Mr G W Matthews for an award of costs against the Canterbury City Council.

Yours faithfully



MRS C W HOARE LLB Solicitor
Inspector

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