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## Appeal Decision

Site visits made on 17 June and 4 August 2021

**by Andy Harwood CMS MSc MRTPI**

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

**Decision date: 19 August 2021**

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**Appeal Ref: APP/X5210/C/19/3240755**

**Land at: 5 Bolton Road, London NW8 0RJ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mrs S Masters against an enforcement notice issued by the Council of the London Borough of Camden.
  - The enforcement notice was issued on 27 September 2019.
  - The breach of planning control as alleged in the notice is without planning permission: The erection of timber fences on top of the existing brick walls along the boundaries with No 4 and 6 Bolton Road (as shown on plan 1).
  - The requirements of the notice are:
    1. Completely remove the timber fences on top of the existing brick walls along the boundaries with No 4 and 6 Bolton Road or;
    2. Reduce the height of the timber fences on top of the existing brick walls along the boundaries with No 4 and 6 Bolton Road so the overall walls and timber fences are no more than 2 metres in height above the natural ground level along the full length of the boundaries with No 4 and 6 Bolton Road.
  - The period for compliance with the requirements is "within a period of three (3) months of the notice taking effect".
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. It is directed that the enforcement notice is corrected by:
  - Deleting the 'site plan';
  - At section 2 'Land to which the notice relates' deleting the words "as shown in red on the attached plans" and replacing them with "as shown on the attached plan";
2. Subject to the corrections, the appeal is allowed, 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 erection of timber fences on top of the existing brick walls along the boundaries with Nos 4 and 6 Bolton Road (as shown on plan 1).

### Preliminary Matters

3. The appellant confirmed prior to the site visit arranged for 17 June, that access to the appeal site was not possible for covid-19 related health reasons.

However, given the short notice provided I carried out an unaccompanied site visit and whilst I could not see the development, I familiarised myself with the surrounding area.

4. Prior to arranging the visit for 4 August, the Council were asked to contact the neighbouring occupiers so that, if access to the site was still not possible, I could potentially view the developments from those properties. The appellant confirmed on 3 August that access to the site was again not possible due to Covid-19 health related issues. I was allowed access to the gardens of Nos 4 and 6 Bolton Road from where I could adequately view both boundaries of those properties with the appeal site. I did not discuss the merits of the case with those people who enabled access to the adjoining gardens. The appellant was informed of this and although expressed disagreement with me proceeding without visiting the appeal site, I am satisfied that I could see what I needed to in order to determine the appeal.

### **The Enforcement Notice**

5. The appellant has presented a number of arguments relating to what they have termed the “nullity” of the notice. Notwithstanding the outcome of the appeal, I have considered those matters.
6. It has been held that Inspectors do not have jurisdiction over whether it was “expedient” to issue an enforcement notice although reasons for issuing the notice will be considered under the appeal on ground (a). Indeed, some of the appellant’s arguments about the notice being a “nullity” relate to the planning merits of relevance to the appeal on ground (a).
7. An earlier attempt at taking enforcement action at this site had resulted in a previous Inspector finding that the notice did not tell the appellant what had been done wrong and what must be done to remedy it. That was with reference to *Miller-Mead v SOS [1963] JPL 151* (and 1 other case) the longstanding leading authorities on these matters. In the present case the notice makes it clear that timber fences have been erected on top of existing brick walls along the boundaries with specific adjoining properties, those being Nos 4 and 6 Bolton Road. This describes that there is more than 1 timber fence on 2 of the boundaries and by looking at ‘plan 1’, it is further defined by showing which boundaries are affected and that there are 2 fences. There is an element of diagrammatic simplification with ‘plan 1’ but it doesn’t need to be a fully accurate survey drawing. It does what it needs to do by clarifying the location of the allegedly unauthorised development.
8. The other plan entitled ‘site plan’ does not show the site “outlined in red” and in fact shows a whole host of properties in the wider area outlined in red. This is confusing at first glance but the regulations<sup>1</sup> at 4(c) require that the precise boundaries of the land to which the notice relates should be specified “whether by reference to a plan or otherwise”. The address is clearly stated by reference to the house number and post-code and ‘plan 1’ shows the location of the developments. This minor confusion due to an error on the ‘site plan’ has not affected the appellant’s understanding of what property the notice relates to and can be corrected using my broad powers under s176(1)(a) of the Act, as it has not caused injustice to the appellant. I will therefore delete the words “as shown outlined in red on the attached plans” substituting them with “as shown

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<sup>1</sup> The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

on the attached plan". I will delete the 'site plan' from the notice because it is not necessary to identify the site. I will leave 'plan 1' in place as it helps to clarify the position of the site and the developments.

9. The notice includes 2 alternative requirements. The first requires the undoing of what has been done which therefore has the purpose of s173(4)(a) of the act, to remedy the breach by restoring the land to its condition before the breach took place. The second alternative requirement allows for a reduction of the height of the timber fences so that the combined height of the fences and pre-existing walls are no higher than 2m above natural ground level. This allows for the retention of part of the allegedly unauthorised development, which I therefore interpret as seeking to remedy any injury to amenity, with respect to s173(4)(b).
10. The appellant has also raised the matter of the accuracy of the allegation and the dimensions of the fencing. However, the notice is sufficiently clear for the appellant to understand what has allegedly been done wrong and has enabled sufficient understanding to pursue the appropriate grounds of appeal. In this and other respects the notice is sufficiently precise.

### **The Appeal on ground (c)**

11. The appeal on this ground is that what is alleged does not constitute a breach of planning control. The onus is upon the appellant to demonstrate their case.
12. The appellant has referred, on the appeal form, to the brick walls with the previous trellises on top exceeding 2m in height and states that the present developments are the same height. It is acknowledged that the timber that has been installed is 1.2m from base to top and that is fixed to the top of the pre-existing walls on both boundaries. I am not provided with detailed surveys of what previously existed or what currently exists. Various photographs have been submitted.
13. At the rear of No 6, there is a step-up into the rear garden where I saw the simple brick-work wall along with the simple, modern slatted fencing fixed along the top of it. The new slatted fence runs along the length of the boundary and is proportionately bigger than the brick wall below it and is different from the previous more traditional trellis. At the rear of No 4, there is again a step up from a lower patio up onto the lawn and flower beds that run alongside the boundary wall with the new timber, slatted fence above it. The brick-work wall on this side looks higher than on the other boundary but the new timber part of the structure is prominent and significantly different in appearance from the previous trellis. As a matter of fact and degree, the change of timber structure as alleged has involved, in my view, an act of development as defined by s55(1) of the Act.
14. The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO) specifies various developments that are permitted by Article 3 of that order. Schedule 2 specifies those developments and Part 2, Class A relates to minor operations including fences and walls. Paragraph A.1. sets limitations for when such development is not permitted by this class. Paragraph A.1.(a) is not applicable because the development is not adjacent to a highway used by vehicular traffic. Paragraph A.1.(b) limits the height of any gate, fence or wall or means of enclosure "erected or constructed" to 2m above ground level. However, A.1.(c) states that any gate,

fence or wall or means of enclosure “maintained, improved or altered” would not be permitted if it exceeds the former height or the heights allowed within A.1.(a) or A.1.(b). Paragraph A.1.(d) is not applicable as the appeal site and adjoining properties are not Listed Buildings.

15. There has not been agreement by the parties regarding where the height of the fence should be measured from. Looking at the photographs provided and from what I could see from neighbouring properties, I am satisfied that the overall height of the fence and wall below would be above 2m measured from the base of the brick-walls on both sides of the appeal site. There is no suggestion that the brick walls below the timber-work have changed. However, the development has involved the improvement of the existing means of enclosure. The removal of the old trellis would seem, on the balance of probabilities, to have occurred just before the installation of the new fencing. I consider therefore that the means of enclosure could legitimately be reinstated at their former heights.
16. The key matter is whether the timber on top is higher than was previously the case. From the available photographs, it appears clear that the fence adjoining No 4 steps-up at the rear where the old trellis did not do so. Part of the structure is higher than the pre-existing height and so the whole of that fence is unauthorised. With respect to the fence on top of the wall adjoining No 6, the Council’s photographs are less clear. However, the top of the trellis does appear to have been lower when assessed with reference to the available photographs and the previous planning permission drawings which the Council has provided extracts of. On the balance of probabilities, I therefore consider that the developments on both boundaries exceed the limitation of paragraph A.1.(c) and the structures cannot therefore be permitted development.
17. The appeal on ground (c) fails.

### **The Appeal on ground (d)**

18. The appeal on ground (d) is whether, at the date that the notice was issued, it was too late to take enforcement action against the unauthorised development. In this case, operational development has taken place and the relevant period as defined by s171B(1) of the Act is 4 years beginning with the date on which the operations were substantially completed. The appellant has provided a copy of a delivery note for the materials which is dated 3 October 2017. The notice was issued on 8 November 2019. The development was not completed more than 4 years prior to the notice being issued.
19. The appeal on ground (d) fails.

### **The Appeal on ground (a) and the deemed planning application**

20. I have to consider whether planning permission should be given for what is alleged on the enforcement notice.

#### *Main issue*

21. The main issue is the effect of the development on the character and appearance of the building and surrounding area. In considering this main issue, I have a duty under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of

preserving or enhancing the character or appearance of the St John's Wood Conservation Area (CA).

### *Reasons*

22. The Council's CA appraisal<sup>2</sup> explains that the CA includes 2 parts within the Council's area which adjoin another more extensive part within the London Borough of Westminster. The CA appraisal refers to the CA as having been strongly influenced by its initial development as a middle and upper middle-class suburb starting in the late Georgian period with the resulting layout being overwhelmingly residential, with only a small number of exceptions. Furthermore, it states that single family dwellings in detached and semi-detached form predominate.
23. The appeal site is in a close-knit part of the CA. The residential properties within Bolton Road are terraced town houses which the CA appraisal confirms date from the late 19 century. At that time there was a move away from grand villas of earlier eras. Some of these houses in Bolton Road have been separated into flats.
24. It appeared to me that the private rear gardens secluded from the surrounding streets are typical in the CA. I found that there are limited views into gardens from neighbouring properties only and not from public view-points which was a reason why my unaccompanied site visit on 17 June was inadequate. Given the discrete nature of most of the garden areas within the CA, it is not possible to ascertain whether there is any particular overriding boundary treatment. The CA appraisal refers to the coherence given to the character of the CA by the widespread use of similar materials. It states that yellow stock brick and stucco dominate.
25. At the appeal site, the older brickwork of the lower boundary walls has weathered to a brownish hue and where some reconstruction has taken place, there is a more varied palette. The Council within their appeal statement refer to it being "red brick" which indicates the lack of complete uniformity in the type of bricks used. Timber of various sorts is commonplace above these walls to gain additional height. The wall between No 6 and No 7 includes a close-boarded fence. The rear boundary of No 4 includes a close-diamond pattern trellis whereas some of the photographs submitted in evidence show large-square patterned trellises. However, there is no overriding form of boundary treatment above the distinctive brick walls that I could see. I have no evidence that any particular kind of trellis is of significance or follows a particular tradition within the CA as a whole.
26. What is clear is that the form of timber additions above brick walls varies. The horizontal timber slatted fencing along the boundaries of the appeal site is more modern than is typically the case along this terrace but the wood is clearly weathering down to a browner tone than was the case when initially installed, as can be seen from various photographs that have been submitted in evidence. The slats are close together which provides a more robust visual enclosure than other types of trellis but they are not solid. I consider the fencing has an elegant modern appearance which compliments the subtle modernisation of this and surrounding properties. I could see from the garden of No 4 that plants can grow up the slats similar to how they do with more

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<sup>2</sup> St John's Wood Conservation Area Character Appraisal and Management Strategy, June 2009

open trellis. The boundary within No 6 has a dense amount of shrubbery growing alongside the boundary and appears to be assisted by the slats.

27. The timber fences compliment the general boundary treatment in the surrounding area and complement the host property as well as those adjoining it. They are not visually prominent from public viewpoints and have a very limited, un-harmful impact upon the wider CA. In relation to the main issue, the development therefore preserves the character and appearance of the CA. Camden Local Plan 2017 Policies D1 and D2 would be complied with, as would the advice within the National Planning Policy Framework.

*Other matters*

28. The fencing does not cause harmful impacts upon neighbouring living conditions due to its height or form of construction.
29. The Council has not recommended any conditions in the event that I am minded to allow the appeal on this ground. I agree that conditions are unnecessary.

**Conclusion**

30. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the erection of timber fences on top of the existing brick walls along the boundaries with Nos 4 and 6 Bolton Road as described in the notice, as corrected.

*A Harwood*

INSPECTOR