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## Appeal Decision

Site visit made on 26 June 2020

**by Timothy C King BA (Hons) MRTPI**

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

**Decision date: 30 July 2020**

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### **Appeal Ref: APP/B5480/C/19/3234683**

### **11 Nelmes Way, Hornchurch RM11 2QY**

- 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 David Man against an enforcement notice issued by the Council of the London Borough of Havering.
  - The enforcement notice was issued on 16 July 2019.
  - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a side boundary fence to a height in excess of 1 metre.
  - The requirements of the notice are to:
    - (i) Remove the fence from the side curtilage of the dwelling which faces Banyards; OR
    - (ii) Reduce the height of the fence from the side curtilage which faces Banyards to no more than 1 metre in height; AND
    - (iii) Remove all materials and debris from the site, resulting from step (i) or step (ii) from the site.
  - The period for compliance with the requirements is one month after the date when this Notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under Section 177(5) of the Act as amended, and falls to be considered.
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### **Summary of decision**

1. The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out in the Formal Decision.

### **Background**

2. Planning permission (ref P0898.13) was granted in November 2013 for the erection of a proposed first floor rear and side extension. The approved drawings also showed a low boundary wall and railings facing Nelmes Way and a low boundary fence fronting the return along Banyards, a cul-de-sac. Although the development was subsequently implemented it was not in accordance with the approved drawings insofar as the boundary enclosure erected was different in profile and involved the introduction of a significant length of timber fencing to a much greater height facing the Banyards return.
3. Following what appears to have been some discussion between the two main parties it is reasonably clear that the Council did not discourage the owner from making a retrospective application in an attempt to regularise the planning position. Indeed, the appellant has submitted an e-mail dated 5 March 2019 from the Council whereby links are provided to make a planning application to

this end. However, as by July 2019 no such application had been received the Council decided that it was expedient, in the circumstances, to issue the enforcement notice.

### **The Appeal on Ground (a) and the Deemed Planning Application**

#### Main Issue

4. The main issue is the development's effect on the character and appearance of the surrounding area.

#### Reasons

5. Firstly, from the paperwork before me, the appellant feels that the Council's approach to the matter was unreasonable. He has submitted a written exchange with the Council which would appear to show that, following his e-mail of 12 September 2018, the Council did not respond until 5 March 2019, as referred to above. The appellant makes an issue of this, stating "*The Council's initial failure to respond to me for 6 months set a precedent for this case and confused matters.*" He also makes a point that the Council, at no time, gave a deadline date for any retrospective application to be submitted. This might be so, but the appellant would certainly have realised that the erection of the high garden fence to the side was at odds with the boundary enclosure permitted under the planning permission previously granted. Moreover, the e-mail exchange shows that an enforcement officer visited the site on 10 August 2018 and met with the appellant. Two breaches of control identified by the Council were apparently discussed at the meeting; one of which was the erection of the said fence, and the need for retrospective planning permission to this end was discussed.
6. Given the above it must have been made clear to the appellant that the irregularity would need to be remedied and this was his responsibility. Nonetheless, the enforcement notice was not issued until July 2019, some eleven months following the site visit. In this context, whether or not the Council took several months to respond to an e-mail is not of significant relevance. In fact, it appears the appellant only attempted to submit a planning application following the enforcement notice being issued. Legally, given the requirements of the notice, it was then too late and, if faced with such an application, the Council was entitled to exercise its right, under s70C of the 1990 Act, to decline to determine it.
7. In the circumstances, I cannot see how the Council confused matters. Although mention is made of a moveable outbuilding in the rear garden which the Council, despite originally saying that planning permission was required to retain it, then subsequently decided not to pursue, the position regarding the fence would have been obvious. Accordingly, the appellant's opinion that the Council created some precedent in terms of delay has no bearing on the case at hand.
8. In terms of policy context and the merits, or otherwise, of the development itself, Emerson Park, the area in which the appeal site falls, is a locally designated Area of Special Townscape Character. Section 38(6) of the Planning and Compulsory Purchase Act, 2004 indicates that an application for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Policy DC69 of the

Council's Core Strategy and Development Control Policies Development Plan Document (DPD) says that planning permission will only be granted if it maintains, or enhances, the special character of the Emerson Park Policy Area which is typified by large and varied dwellings set in spacious and well landscaped grounds.

9. The above specific policy requirement is backed up by the general objectives of DPD policy 61 and also the Council's Supplementary Planning Documents (SPDs) concerned with 'Landscaping' and 'Residential Extensions and Alterations', respectively. The SPDs both aim, amongst other things, to ensure that boundary treatment should be compatible with neighbouring properties and should reinforce the prevailing character of the streetscape. At my site visit, however, I noted the fence's clear incongruity to its contextual setting. The visual impact of this not inconsiderable stretch of fencing is in stark contrast to the arrangement directly opposite where No 13 Nelmes Way also returns onto Banyards. Here, low trellis fencing fronts the planting behind and also the taller garden wall beyond, which is set back significantly from the footway. This serves to provide a feeling of openness consistent with other properties along Banyards rather than the harsh solidity of the appeal site's close boarded fencing that stands directly adjacent to the footway. In the circumstances, although I observed shrubs growing behind the said enclosure neither treatment nor weathering of the fence itself would mitigate its presence.
10. The appellant refers to the existence of a high fence, also in the Emerson Park area, which runs to the side of 11 Parkstone Avenue, facing onto Rock Chase Gardens. This enclosure is substantial and, to this end, I have some sympathy with the appellant in this respect. I have little knowledge as to the Council's reasons for granting planning permission in that particular instance save for the comment in its representations that the site was a larger scale development which included the entire demolition of the former house and the site's whole redesign. Although the Council was quite entitled to reach that decision, as it was to issue the enforcement notice in the case of 11 Nelmes Way, this can be considered as a lack of consistency by the Council. However, my remit is to weigh up the merits, and/or impacts of the development currently at issue.
11. I have had due regard to the other examples of local boundary enclosures cited by the appellant in an attempt to support his case. However, whilst they are considerations, I note from the Council's comments that some of these, although not permitted by the Council, have become immune from enforcement action through the passage of time. At my site visit I also noted that there is a high timber fence at the far end of Banyards which is at odds with the character of the cul-de-sac. The Council's representations do not seemingly refer to this structure, and its planning status is therefore not clear. Nonetheless, relative to the appeal site, this other fence is in a rather less open and prominent position, although the appellant is right to raise this matter. Having carefully weighed matters up, though, the presence of the developments referred to do not outweigh the harm that I have identified from the fencing now enforced against, due largely to its visual prominence and particular location.
12. The appellant considers that the original complaint might have been racially motivated, and also cites inaccurate statements in the Council's representations. Racial motivation, in this instance, is conjecture, and I have

not seen any compelling evidence to suggest that this was a factor which predicated the initial complaint to the Council by an interested party. As regards the accuracy or otherwise of the Council's case the fence is in situ, and this has afforded me, independently, the opportunity to assess the effect of the development on its immediate surroundings.

13. I have given weight to the individual needs of the appellant's family in terms of securing the garden from any intruders which is understandably a concern. In this respect I have had regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, noting that the need for a secure family environment is a material consideration, and also Articles 1 and 8 of the Human Rights Act (HRA). Interference with Article 1 will depend on whether there is a legitimate aim in the Council's decision to issue the enforcement notice. In this instance, having read through the Council's representations, the aim was clearly to comply with relevant planning policies and, in particular, the guidance within the SPD referred to.
14. Given the circumstances I am not convinced that this substantial length of unduly prominent and incongruous close-boarded timber fencing is the only solution to allow for the property's security. Other properties in the Banyards, including No 13, have adhered to the original design objective and the rationale behind this. Further, from the appellant's representations there is no real indication that designs and arrangements of boundary enclosures more consistent with the characteristic open frontages have been explored. As such, and in view of the fence's adverse visual impact, I am satisfied that the Council's action was necessary and proportionate. In, therefore, weighing up all the relevant factors, I am not convinced that the notice's requirements constitute a breach of the appellant's right to peaceful enjoyment of his land nor does it unduly compromise the right of respect for his private and family life. Accordingly, neither the PSED nor Articles 1 and 8 of the HRA have been unacceptably violated by the enforcement notice, and the reasons for its issue are stated clearly within the document.
15. In summarising, I have not found this to be a trivial or technical breach, and neither, in the circumstances, do I consider the Council's decision to issue an enforcement notice constitutes a punitive measure. Instead, the notice serves a remedial purpose, and its stated requirements give the appellant the option of either lowering the fence to not exceed 1m in height, as is consistent with the appellant's permitted development entitlement under the Town and Country Planning (General Permitted Development) (England) Order 2015, or instead removing the fence and exploring other possible design solutions to arrive at a suitable replacement.
16. I therefore conclude that the development is harmful to the character and appearance of the surrounding area, contrary to the aims and requirements of DPD policies DC61 and DC69 and policies 7.4 and 7.6 of the London Plan, which also serve to ensure that new development has regard to local character. Further, the development conflicts with relevant guidance from the SPDs referred to and also advice set out in paragraph 127 of the National Planning Policy Framework.
17. For the above reasons, and having had regard to all matters raised the appeal under ground (a) is dismissed and planning permission is refused on the

application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **The Appeal on Ground (g)**

18. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
19. The enforcement notice stipulates that compliance is required one month after the date it takes effect. Although the appellant has lodged an appeal on ground (g) he does not, however, say what would be a more reasonable timeline and why. Nonetheless, I am mindful that if the fence were to be removed, rather than lowered, it would necessitate the need for alternative boundary enclosure measures to be considered.
20. S176(1)(b) of the 1990 Act says that, on an appeal under s174, an Inspector may vary the terms of the enforcement notice if he is satisfied that this would not cause injustice to either main party. Although removal of the fence would not be a particularly timely exercise an alternative means of enclosing the site might involve a formal approach to the Council in order to reach an agreement. In this case I am satisfied that a period of three months would be more appropriate to make the necessary arrangements, and achieve compliance. This extension of time would not cause prejudice to either main party.
21. On this basis the appeal succeeds on ground (g) and I shall vary the notice, accordingly.

### **Formal Decision**

22. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of one month and the substitution of three months as the period for compliance. Subject to this variation 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.

*Timothy C King*

INSPECTOR