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## Appeal Decision

Site visit made on 8 December 2014.

**by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)**

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

**Decision date: 13 January 2015**

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**Appeal Ref : APP/G5180/C/14/2218528**  
**57 Elm Grove, Orpington, BR6 OAA**

- 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. Ketenci against an enforcement notice issued by the Council of the London Borough of Bromley.
- The notice was issued on 17 March 2014.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a metal pedestrian access gate, vehicular access gates and railings to the front boundary of the land measuring a maximum of 2.2 metres above ground level adjacent to a highway used by vehicular traffic, in excess of the permitted height limit of 1 metre; the position of the gates and railings are shown by a blue line on the plan attached to the notice.
- The requirements of the notice are to i. remove the pedestrian access gate, vehicular access gates and railings from the land; and ii. remove from the land all building materials and debris arising from compliance with requirement i. above.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: the appeal is dismissed and the enforcement notice is upheld.**

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### Preliminary Matters

1. The Appellant says that he was incorrectly advised by a gates and railing company that planning permission was not required for the works the subject of the notice. Not being aware of the need for permission is not a ground of appeal and therefore not a matter I have taken into account.
2. The notice at paragraph 4 refers to an application for retrospective planning permission which was refused on 3 January 2014. But that application, which was refused by notice dated 6 January 2014, concerned plans that were materially different from the development attacked by the notice (for example, it included brick piers not metal posts) and therefore was not strictly retrospective. As the reference is not in the operative part of the notice and there is no misunderstanding between the parties as to the development attacked by the notice I have not considered it necessary to consider the exercise of my powers of correction.

## **Ground (a) appeal and deemed application**

### **Main issue**

3. The main issue in determining this appeal is the effect of the development on the character and appearance of the host property and the surrounding area.

### **Character and appearance**

4. The development plan (including the London Plan and saved policies of the Bromley Unitary Development Plan (the UDP)) mirrors the National Planning Policy Framework (the Framework) in emphasising the importance of high standards of design. Policy BE1 of the UDP requires that development should be of a high standard of design. Policy BE7 of the UDP specifically refers to railings, boundary walls and other means of enclosure and states that high or inappropriate enclosures will be resisted where such boundary treatment erodes the open nature of an area. I have also taken into account as a material consideration Supplementary Planning Guidance 'General Design Principles' (SPG1) and 'Residential Design Guidance' (SPG2) which emphasise that good design should respect the character and appearance of its site, immediate neighbours and wider streetscene.
5. The appeal site is a detached dwelling located in a residential area. The location of the site is prominent near a corner with a road junction and opposite a public footpath. The parties differ in their description of the surrounding area. The Appellant argues that the immediate area in the vicinity of the road junction is dominated by higher walls and fencing than the wider area described by the Council in the notice. I found from my site visit that the local streetscene is characterised by houses with low level boundary walls, fences or hedges which provide open vistas that contribute to the character and appearance of the area. Whilst I note that there are examples of timber fences and other boundary treatment of a similar height to the development attacked by the notice (including the neighbouring fence and wall) these examples are not so widespread as to affect the predominantly open character of boundary treatment in the surrounding area.
6. The posts, gates and railings the subject of this appeal are in three sections of varying heights on sloping ground. The excessive height causes harm to the character and appearance of the host dwelling and surrounding area. It detracts from the predominantly low level nature of boundary treatment in the area. Whilst I note that the design allows views of the main dwelling its black metal construction and decorative design is discordant in the streetscene. It is out of keeping with its surroundings in a highly visible location.
7. The Appellant draws to my attention various properties in the vicinity. I observed these properties at my site visit but I do not know the circumstances of the boundary treatments at these sites. Nevertheless, any harm caused by other development does not outweigh the harm caused to the character and appearance of the surrounding area by this development.
8. I fully understand and sympathise with the Appellant's safety concerns and the desire to prevent crime, particularly in the context of burglaries described at the family home. Development plan policies acknowledge the need to design out crime where possible. But there is nothing before me to show that alternative measures could not provide significant protection to the dwelling

without harming the streetscene. On balance the harm to the character and appearance of the area is not outweighed by the crime and safety considerations outlined by the Appellant.

9. I have considered whether the identified harm could be overcome by conditions. I have taken into account the Planning Practice Guidance. None of the parties suggests conditions and I do not consider that conditions could overcome the identified harm.
10. I conclude that the development causes harm to the character and appearance of the host dwelling and the surrounding area and does not accord with relevant development plan policies (including policies BE1 and BE7 of the UDP), the Framework or SPG1 or SPG2. For the reasons given above I conclude that the appeal on ground (a) should not succeed and planning permission should not be granted on the deemed application.

### **Ground (f) appeal**

11. This ground of appeal is whether, having regard to the purpose for which the notice was issued, the steps exceed what is necessary to meet that purpose.
12. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (section 173(4) (a)) is to remedy any breach of planning control which has occurred. The second (section 173(4) (b)) is to remedy any injury to amenity which has been caused by the breach.
13. Where the purpose is to remedy the breach, s173 (4) (a) states that this can be achieved by restoring the land to its condition before the breach took place. That is what is sought in the specified steps. The notice requires the complete removal of the unauthorised development. The purpose of the notice is thus to remedy the breach of planning control that has occurred and no lesser steps than those specified would achieve that purpose.
14. The Appellant proposes lesser step options. He proposes reduction in the height of the largest pair of vehicular access gates and, if necessary, also the pedestrian gates and railings. He proposes to reduce the height by the removal of the arrow shaped spikes at the top of the uprights that project above the horizontal top rail of the gates and railings. But this would not address the identified harm as the remainder of the development would continue to cause harm by reason of its design and materials. These lesser steps would not achieve either of the purposes set out in section 173.
15. For the reasons given above I conclude that the appeal on ground (f) should not succeed.

### **Ground (g) appeal**

16. This ground of appeal is that the time to comply with the requirements falls short of what should reasonably be allowed. The time period for compliance in the notice is 28 days. The Appellant says that two months would be reasonable as the works required will involve the employment of a specialist worker.
17. I have balanced competing interests – the private interest of the Appellant in developing his property and the public interest of bringing the harm to the character and appearance of the area to an end without unnecessary delay.

There is nothing before me to demonstrate that the requirements of the notice could not be undertaken within 28 days. I consider that 28 days strikes an appropriate balance and I am upholding the notice accordingly.

18. I conclude that the period for compliance specified in the enforcement notice is reasonable on the information before me and therefore the appeal on ground (g) fails.

**Formal Decision**

19. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*S. Prail*

**Inspector**