
Appeal Decision

Site visit made on 25 April 2014

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 2 May 2014

Appeal Ref: APP/X5210/C/13/2206056

128 Belsize Road, London NW6 4BG

- 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 Panos Gyftopoulos against an enforcement notice issued by the Council of the London Borough of Camden.
 - The notice was issued on 29 August 2013.
 - The breach of planning control as alleged in the notice is paving of front garden.
 - The requirements of the notice are remove the paving and reinstate soft landscaping to front garden.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is dismissed, 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.

Reasons

The ground (c) appeal

2. A ground (c) appeal is made when the Appellant maintains that there has not been a breach of planning control because, principally, planning permission has been granted for the works or they are permitted development.

3. 128 Belsize Road is a mid-terraced property that is, on the Council's uncontested evidence, eight flats. Flats do not benefit from permitted development rights conferred by The Town and Country Planning (General Permitted Development) Order 1995 and even if the property was to be considered a dwelling, which would have permitted development rights, those rights have been removed by an Article 4(1) Direction made by the Council in 2010.

4. The paving that is the subject of the enforcement notice is not permitted development and planning permission has not been granted for its installation at the appeal property. The ground (c) appeal thus fails.

The ground (a) appeal

5. The main issue is the effect of the paved front garden at 128 Belsize Road on the character of the Swiss Cottage Conservation Area, within which the appeal property is situated. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid to the desirability of preserving the character or appearance of the Conservation Area.

6. The small garden area at the appeal property, between the frontage of the property and a boundary wall to the pavement, has been wholly paved to replace previous primarily soft landscaping. The Appellant points to the fact that many similar properties in the long terrace on the north-west side of Belsize Road have wholly paved front garden areas. The Council accepts this and found, following a survey in 2008/9, that 43% of properties in the Conservation Area have paved front gardens. This was a reason, to preserve the remaining verdant front garden areas of the Conservation Area, for the Article 4(1) Direction.

7. Traditionally all properties in the terrace would have had soft landscaped front gardens. A comparison of the paved front gardens along the terrace with those that remain soft landscaped illustrates the harmful effect of the former. They are unattractive and lack individuality and charm. They are characterless and have eroded and harmed the character of the Conservation Area. The Council acted appropriately by making the Article 4(1) Direction to prevent any further erosion of the character of the Conservation Area by the paving over of any more front gardens in the area.

8. The paving in the front garden area at 128 Belsize Road has had a significant adverse effect on, and has not thus preserved, the character of the Swiss Cottage Conservation Area. The works thus conflict with policy CS14 of the Council's Core Strategy and with policies DP24 and DP25 of their Local Development Framework Development Policies, and with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

9. The Appellant is unlucky, compared to some of his neighbours, because he paved the front garden area at the appeal property after the Article 4(1) Direction was made. However, to allow him to retain the paving at the appeal property would undermine the Direction and would be likely to result in further erosion of the character of the Conservation Area that the Council would be unable to resist. The Swiss Cottage Conservation Area Design Guide published by the Council, which gives advice on alterations and repair following the introduction of the Article 4(1) Direction, states that "Alterations which are not carried out in accordance with this Guide may be subject to enforcement action by the Council".

John Braithwaite

Inspector