

Appeal Decisions

Site visit made on 14 December 2016

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 17 February 2017

Appeal A - Appeal Ref: APP/X5210/C/16/3154765

Flat 1, April House, 45 Maresfield Gardens, London, NW3 5TE

- 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 Kfir Chervinski against an enforcement notice issued by the Council of the London Borough of Camden.
- The enforcement notice, reference EN15/0735, was issued on 8 June 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of unauthorised 2 x central gate piers and metal gates on front boundary of the property.
- The requirements of the notice are to completely remove the two central gate piers and gates from the front boundary of the property and remove the resultant debris from the site.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

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

Appeal B - Appeal Ref: APP/X5210/W/16/3155248

Flat 1, April House, 45 Maresfield Gardens, London, NW3 5TE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Kfir Chervinski against the decision of the Council of the London Borough of Camden.
- The application Ref 2016/2827/P, dated 18 May 2016, was refused by notice dated 19 July 2016.
- The development proposed is installation of boundary treatment including means of access and hardstanding (Retrospective).

Summary of Decision: The appeal is dismissed.

Application for costs

1. An application for costs was made by the Appellant against the Council in respect of Appeal B. This application is the subject of a separate Decision.

Procedural Matters

2. The appeal on ground (a) in Appeal A is on the basis that planning permission should be granted for what is alleged in the notice, that, is the erection of unauthorised 2 x central gate piers and metal gates on front boundary of the
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property and the deemed planning application¹ is for the same development. But the development in Appeal B is different in that, among other things, it includes the hardsurfaced area, the proposed cross-over, the boundary treatment and proposed works to the footway. Some of the works have been undertaken and completed and although the application is described as retrospective it is not so in total. In the circumstances of this appeal I will consider it as one application and I will not exercise my power to issue a split decision. In addition, I will determine both appeals taking the differences of the developments into account.

The appeal on ground (a), the deemed planning application and the s.78 appeal

The main issues

3. From the reasons for issuing the notice and the reasons for refusal I consider that the main issues are the effect of each development on firstly, highway safety and secondly, on parking in the area.
4. The appeal site comprises a three storey building, with lower ground and roof levels, known as April House which is currently divided into two flats. The former layout of the site included an off-street forecourt with a double width crossover located off-centre to the south of the open front boundary. Two tall brick built piers are located on each front boundary corner.
5. What I saw on my visit were two parking spaces, one to the south of the forecourt and one to the north separated by planters providing a hedge and a footway to the front door; the central brick piers that are the subject of the notice mark the entrance to this central pathway. On the southern side of the forecourt there was a pedestrian gate attached to the corner brick pier and a metal pier and, although there were fastenings in the ground, there were no gates across the vehicular access. The southern parking space was accessed across a dropped kerb. There was a pedestrian metal gate between the two central brick piers and the metal gates across the northern parking space were padlocked shut with a chain. Access to this parking space would be predominantly across the footway with no dropped kerb.
6. The plans in the s.78 appeal show a similar arrangement save for, among other things, gates at the southern parking space, changes to the surface of the footway and a cross-over extended across the whole of the access to the northern parking space².
7. In my opinion the current access to the northern parking space, whether lawful or not, is extremely problematical given the location of the central piers and the lawful on-street parking of vehicles in the parking bay which results in a vehicle having to access the forecourt at an angle and across the footway. The difficulty is enhanced by what I saw on my visit, that is, the lawful parking of a vehicle within the bay but with the boot 'hanging over the line' for about 0.5m thus making the angle of access into the northern parking space very sharp, if not impossible. Hence the Appellant's application to increase the width of the cross-over, which would result in the reduction of the parking bay.

¹ Pursuant to s.177(5) of the 1990 Act by virtue of, in this case, the fee being exempt

² Drawing No PL200/131 Rev 0

8. With regard to vehicle exits at the back edge of the footway 'Manual for Streets 2' explains that 'emerging drivers will have to take account of people on the footway. The absence of wide visibility splays at minor accesses will encourage drivers to emerge more cautiously - similarly to how vehicles pull out when visibility along the carriageway is restricted'³. No dimensions are suggested for visibility splays from such exits but 'Consideration should be given to whether [such an exit] will be appropriate, taking into account the following; the frequency of vehicle movements; the amount of pedestrian activity; and the width of the footway'⁴.
9. It is not possible to turn a vehicle once it has been parked in either the southern or northern space on the forecourt of the appeal site, thus if a vehicle is driven onto the site it will have to reverse out and vice versa. The central brick piers are substantial being some 0.6m square and some 1.8m high. Whilst I accept that in circumstances such as this a driver should be cautious when entering or exiting parking spaces, as stated above, the views of a driver exiting from either parking space, particularly in reverse, would be significantly impeded by the bulk and mass of the central brick built piers and the vehicle would have to pull out for some distance across most of the width of the footway to enable proper views of the footway and the road. I do not consider that the width of the footway in this area is unusually wide as suggested by the Appellant. The hazard of exiting from the forecourt across the footway would be exacerbated by the fact that the parking spaces are not obvious ones, being set back from the footway and obscured by the high brick piers on the corners of the site, the central brick piers and the substantial height of hedges on the boundaries and within the site.
10. The hazards are increased in my mind by the siting of the northern parking space which has been achieved by the location of the central brick piers. The notice does not address the use of the access or its formation but any vehicle exiting the northern space would have severely restricted views in both directions but particular to the north because of the high northern boundary and the location of any vehicles parked in the parking bay.
11. The Appellant's survey of pedestrian traffic counted 144 movements in the morning and 117 movements in the afternoon. The Appellant's transport expert considered this to be a low level of movement whereas the expert appointed by an interested person considered it to be a significant flow. In any event, the survey was limited to periods in the morning and afternoon on one day and thus can only provide a snapshot. I note that there are a number of schools in the area and that the survey did not take place over the lunchtime period. Whatever the flow may be, from what I saw on my visit because of the layout and other features of the appeal site I consider that a pedestrian would not necessarily be aware that there were parking spaces in this location which, together with the obscured views of a driver referred to above, results in a significant risk to pedestrian safety.
12. The traffic survey also found a low flow of traffic but at the time of my visit there was a considerable amount of vehicular traffic in both directions along Maresfield Gardens. Whether vehicular traffic is low or not, because of the obscured views of a driver exiting from the appeal site I consider that the two central piers cause harm to highway safety.

³ Paragraph 10.6.1

⁴ Paragraph 10.6.2

13. I therefore conclude that the erection of the two central gate piers and metal gates on the front boundary of the property as alleged in the notice, which results in the current layout of the forecourt, and as provided for in the s.78 appeal have an adverse effect on highway safety which is contrary to Policies DP19 and DP21 of Camden Development Policies 2010-2025 which seek, among other things, to resist development which would harm highway safety and which expect development connecting to the highway network to avoid causing harm to highway safety.
14. The access arrangement in the s.78 appeal is that the dropped kerb would be extended across the access to the northern parking space. There is currently a residents' parking bay immediately to the north of the appeal site. This bay would have to be reduced in length to accommodate the proposed dropped kerb.
15. There is dispute between the Appellant and the Council about how many cars can be parked in the bay at its current length. The bay is one single bay and it does not have individual spaces marked out. The Appellant relies on a Parking Survey Guidance Note issued by Lambeth Council and suggests that only four smaller cars can park in the bay. However, at the time of my visit four cars were parked in the bay, one vehicle was driven away and the space was almost immediately taken by another vehicle. The vehicles I noted were not small cars and the car that departed did so without any unnecessary manoeuvring and the car that arrived was parked easily in the vacated space. I appreciate that this was only one instance but it does indicate that four cars can and do park in the bay. In addition to what I saw local residents have provided photographs showing four cars in the bay which indicates that this is a reasonably common occurrence.
16. The Appellant's parking survey was based on the Lambeth Council parking survey method and surveys were undertaken on two nights in September 2015. The surveys showed moderate parking stress within 200m of the appeal site and demonstrated sufficient reserve parking capacity. The conclusion of the Appellant's Transport Statement was that there is sufficient reserve parking in the vicinity of the appeal site to accommodate any displaced resident parking resulting from the forecourt parking layout. I note that the survey was limited to two nights only.
17. In contrast, the Council says that the Controlled Parking Zone in which the appeal site is located suffers from high levels of parking stress and 114 permits are issued for every 100 spaces. So far as I am aware a permit is issued for a car regardless of its physical size. I accept that not every permit will be in use at any one time but the Council's figures indicate to me that there is an under supply of on-street parking and that any reduction such as proposed would cause harm to parking in the area. Again, I appreciate that what I saw on my visit was just one instance but the parking bays on Maresfield Gardens were very heavily parked despite many of the properties having off-street parking for more than one car.
18. Although it would only affect one space, the reduction in on-street parking that would arise from the extension of the cross-over would be contrary to Policies DP19 and DP21 which seek among other things to resist development which would create a shortfall of residents' parking and harm existing on-street parking demand. I therefore conclude that the proposed increase in the width

of the cross-over as provided for in the s.78 appeal would have a harmful effect on on-street parking in the area and that it would be contrary to Policies DP19 and DP21 of Camden Development Policies 2010-2025.

19. The ground (a) appeal and the deemed planning application do not include an extension of the crossover. In the circumstances I do not consider that the breach of planning control alleged in the notice has any effect on on-street parking in the area.

Other matters

20. The Appellant has provided a s.106 unilateral undertaking⁵ in which among other things he covenants to restrict car parking permits for the appeal property and provide contributions towards realigning the crossover into the northern parking space; realigning the adjacent parking bay; providing for a new or extended on-street resident parking bay in the vicinity; costs associated with any necessary revision of a Traffic Regulation Order; the provision of an on-street car club bay in the vicinity; and the provision of an on-street electric car charging point in the vicinity. The Council advises that it has no mechanism to partially restrict parking permits and that any suggestion that Traffic Management Orders could be amended is wholly unreasonable given the magnitude and cost of the task⁶. Given the far ranging nature of the covenanted matters I am not persuaded that they are fairly or reasonably related to the scale and kind of development that has taken place and which is proposed. In any event, they only address the question of the reduction of on-street parking; more importantly in my mind they do not address the poor visibility and highway safety aspects that arise from the development. I therefore give the unilateral undertaking very limited weight.
21. A number of planning conditions have been suggested in the documents but I do not consider that the imposition of any of these would address the main issues and render the development acceptable given the harm I have found.
22. The Appellant has made reference to a large number of other off-street parking arrangements some of which I saw on my visit. However, all the locations and circumstances appeared to me to be different from those with which I am concerned in these appeals which I have considered on their own merits.
23. Matters of design and the effect of the development on the character or appearance of the Conservation Area in which the appeal site is located are not matters that form the subject of either the reasons for issuing the notice or the refusal of the application. I have therefore not taken these matters into account in my determination of these appeals.
24. Both the Appellant and the Council have raised a number of other matters that I have taken into account but which do not affect my conclusions in respect of the main issues.

Conclusions

25. I therefore conclude that the development that is the subject of Appeal A has a harmful effect on highway safety and this outweighs the lack of harm to

⁵ Dated 9 January 2017

⁶ The Council's Final Comments dated 1 December 2016 although its position may have changed – email from the Appellant to the Inspectorate dated 11 January 2017

parking in the area. The appeal on ground (a) fails and the deemed planning application is refused. I also conclude that the development and prospective development that is the subject of Appeal B has a harmful effect on highway safety and on parking in the area and therefore Appeal B is dismissed.

The appeal on ground (f)

26. An appeal on ground (f) is on the basis that the steps required to be taken exceed what is necessary to remedy the breach.
27. The requirements are to remove the two central gate piers and gates from the front boundary of the property and remove the resultant debris from the site. There is no requirement, as suggested by the Appellant, to revert to the former layout. Nor are the requirements restricted to the northern of the two central piers.
28. The purpose of the requirements is to remedy the breach by restoring the land to its condition before the breach took place⁷. In this appeal this is what the requirements seek to do in requiring the removal of the central piers and the gates. I note that permitted development rights permit, in certain cases, the erection of a gate, fence, wall or other means of enclosure which is not more than 1m above ground level⁸ and so depending on circumstances the requirements could be varied to provide for the reduction of the piers and gates to this height.
29. However, Article 3(6)⁹ provides that permission granted by Schedule 2 does not authorise any development which creates an obstruction to the view of persons using any highway used by vehicular traffic so as to be likely to cause danger to such persons. I have noted above that the location of the central piers has resulted in the creation of a parking space on the northern part of the forecourt which I have concluded causes a hazard to pedestrians and highway safety and also that they obstruct the views from both parking spaces. For these reasons the construction of the central piers does not accord with permitted development rights because they obstruct views and are a cause of danger. Any lesser step than complete removal of the central brick piers and the gates would not fulfil the statutory purpose of the requirements.
30. The appeal on ground (f) fails.

Conclusions

Appeal A - Appeal Ref: APP/X5210/C/16/3154765

31. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal B - Appeal Ref: APP/X5210/W/16/3155248

32. For the reasons given above, and taking all matters into account, I conclude that the appeal should be dismissed.

⁷ S.173(4) of the 1990 Act

⁸ Class A, Part 2, Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 as amended

⁹ Of the Town and Country Planning (General Permitted Development) Order 2015 as amended

Decisions

Appeal A - Appeal Ref: APP/X5210/C/16/3154765

33. 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.

Appeal B - Appeal Ref: APP/X5210/W/16/3155248

34. The appeal is dismissed.

Gloria McFarlane

Inspector