



Appeal Decision

Site visit made on 5 February 2019

by **Paul Freer BA (Hons) LLM PhD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 February 2019

Appeal Ref: APP/X5210/C/18/3207127

Land at 50A Haverstock Hill, London NW3 2BH

- 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 Ahron Halpern against an enforcement notice issued by the Council of the London Borough of Camden.
 - The enforcement notice, numbered EN18/0049, was issued on 6 June 2018.
 - The breach of planning control as alleged in the notice is, without planning permission, an engineering operation comprising demolition of front boundary wall, lowering level of forecourt and creation of new hardstanding to create off street car parking.
 - The requirements of the notice are to completely remove the brick hardstanding and reinstate the forecourt paving with materials to match the original. Reinstatement of the rendered brick boundary wall with copping stone and railings to match the original.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld as varied

The Enforcement Notice

1. There are a number of inconsistencies between the breach of planning control alleged in paragraph 3 of the notice and the requirements to comply with the notice at paragraph 5. Some of these inconsistencies are relatively minor. The requirement at paragraph 5 is to reinstate the 'rendered brick boundary wall', whereas the breach of planning control at paragraph 3 simply refers to a 'front boundary wall'. Similarly, the requirement at paragraph 5 is to remove the 'brick hardstanding' whereas paragraph 3 refers only to a 'new hardstanding'. I am satisfied that these inconsistencies do not alter the meaning of the notice, and it is evident that the appellant has understood what he is required to do to comply with it. I am therefore satisfied that I can vary the notice in these respects without causing injustice.
2. However, there is one inconsistency that is significant and in particular to the appellant's appeal on ground (f). The breach of planning control alleged at paragraph 3 includes 'lowering level of forecourt'. The associated requirement at paragraph 5 is simply to 'completely remove brick hardstanding and reinstate the forecourt paving with materials to match the original'. On any plain reading of this sentence, the steps required to be taken only relate to surface level: in other words, replacing the brick hardstanding with paving. There is no attendant requirement to restore the level of the forecourt to that existing prior to the breach of planning control taking place.

3. It is not apparent from the notice itself whether the Council intended to under-enforce in this respect albeit, from the Council's evidence, it would appear that this was not the intention. In any event, as I read it, the effect of the notice as issued is that there is no requirement to restore the level of the forecourt. I have taken this into account in considering the appeal on ground (f).
4. In addition to the above, there is a typographical error in paragraph 5 of the notice insofar as the word 'copping' should be 'coping'. I will take the opportunity to correct that error.

The appeal on ground (c)

5. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
6. The appellant's case in this ground of appeal is that the demolition of the front boundary wall is permitted development under Class C, Part 11, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). However, the demolition of the front boundary wall formed just one part of a wider development that included the lowering of the level of the forecourt. The latter is an engineering operation that constitutes development under Section 55(1) of the Town and Country Planning Act 1990. On the evidence available to me, the demolition of the front boundary wall and the subsequent engineering works to lower the forecourt were carried out as a single operation. In these circumstances, the provisions of Class C of Part 11 of the GPDO do not apply and the development as a whole, including the demolition of the front boundary wall, constitutes development requiring planning permission.
7. Accordingly, the appeal on ground (c) fails.

The appeal on ground (a) and the deemed planning application

8. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issues raised are:
 - the effect on the character and appearance of the area, and
 - whether the development results in an increase in car usage.

Character and appearance

9. The appeal site forms part of a ribbon of development on the east side of Haverstock Hill. The buildings in this group generally respond to the fall in ground level towards the south with steps to the roof height and, at ground level and where present, in terms of the boundary treatment. The level of the forecourt to the individual properties also reflects the fall in ground level.
10. The buildings in this group are disparate in terms of their architectural form and appearance but are, with some exceptions, united by the presence of front

boundary treatments that separate the private space from the public domain. This boundary treatment is itself diverse in terms of its form and appearance but, nevertheless, in each case fulfils the function of separating the private and public space. In this respect, the presence of this boundary treatment makes an important contribution to the character and appearance of this group of buildings. The fact that some of the buildings in this group have front extensions rather than front boundary treatments does not fundamentally undermine the contribution made by the collective front boundary treatments that are present.

11. Although somewhat tired in appearance, the front boundary treatment that was removed to create the new hardstanding was effective in separating the private space at the front of the appeal property from the public domain. Notwithstanding any inconsistency between the individual elements, the wall, pillars and metal railings were all in keeping with the character and appearance of the main dwelling. Even though constructed of materials of no particular architectural merit, the raised forecourt reflected the fall in ground level and integrated with the forecourts of other properties in the group. Individually and collectively, the features of the front boundary treatment therefore reinforced the important contribution made by front boundary treatments to the character and appearance of this group of buildings.
12. By contrast, the new hardstanding exposes the forecourt of the appeal property to public view and, in visual terms, fails to achieve an effective separation of the private and public space. The open forecourt fails to integrate with the enclosed forecourts to other properties in the group, and this is harmful to the character and appearance of this group of buildings as a whole. The harm in this respect is exacerbated by the materials used for the new hardstanding which, by reason of their colour, are unsympathetic to the appearance of the main dwelling. The fact that the adjoining development also employs a dark-coloured paving for its hardstanding does not justify the materials used for the new hardstanding. The adjoining development is a separate entity of entirely different character and appearance to the group of buildings of which the appeal site forms a part.
13. Neither is it a defence to say that permitted rights for single-family dwellinghouses would enable a permeable surface to be put down without express planning permission. The appeal property is not a single-family dwellinghouse, and those rights are not available. Express planning permission is required in this case, such that the quality and appearance of the materials to be used do fall to be considered.
14. I conclude that the new hardstanding unacceptably harms the character and appearance of the area. I therefore conclude that the development subject to the notice is contrary to Policy D1 of the Camden Council Local Plan 2017 which, amongst other things, requires that development respects local context and character, comprises materials that are of high quality and compliment the local character, and contributes positively to the street frontage.
15. In addition to being in conflict with the development plan, the loss of the boundary treatment as a result of the breach of planning control also fails to accord with the guidance set out in the Camden Planning Guidance 1: Design. This guidance indicates, amongst other things, that boundary treatments should delineate public and private areas.

Car usage

16. Policy T2 of the Camden Council Local Plan 2017 indicates, amongst other things, that the Council will limit the availability of parking and will resist the development of boundary treatments and gardens to provide vehicle crossovers and on-site parking. The question therefore immediately arises whether the new hardstanding is used, or is capable of being used, for the parking of vehicles and therefore increases the potential for car usage at the site.
17. The appellant contends that with the previous set up, once the wall was removed, it would have been technically possible for a car to 'bump up' onto the hardstanding. However, the photographs of the engineering works in progress that form part of the Council's evidence clearly show a significant vertical step between the surface of the raised forecourt and pavement level. In my judgment, it would not have been physically possible for a standard car to have gained access onto the surface of the raised forecourt as it stood before the ground level was lowered to create the new hardstanding. Indeed, this is axiomatically so because, had that significant step not been present, there would have been no need to undertake the engineering operation to lower the surface level of the forecourt. It must therefore follow that the breach of planning of control subject to the notice has resulted in a situation where the parking of cars is possible whereas previously it was not.
18. Moreover, not only is the parking of cars now technically possible, the evidence before me indicates that it has occurred in practice. In its evidence, the Council has provided a number of photographs that clearly show vehicles parked on the new hardstanding. I noted during my site visit that the hardstanding is divided into separate bays, each the approximate size of a standard parking bay and delineated by brickwork of a different colour to the majority of the surface. In my view, this suggests an intended use for car parking. I also noted that there were oil spills on the surface of the hardstanding in positions consistent with vehicles being parked there. The wording of the representation from the occupier of a neighbouring dwelling, expressing the view that the forecourt should cease being used as a parking space, is also an indication that the new hardstanding has been used for the parking of cars by the occupiers of the flats in the appeal property.
19. Consequently, whilst I can accept that the appellant's original intention may have been to remove the front wall to facilitate the bringing out of refuse bins, in practice the development has resulted in a new hardstanding that is being used for the parking of vehicles where this was not previously possible. I therefore conclude that the new hardstanding has resulted in an increase in the availability of car parking spaces and car usage, and as such is contrary to Policy T2 of the Camden Council Local Plan 2017.
20. The Council also cites the guidance set out in the Camden Planning Guidance 7: Transport in the reason for issuing the enforcement notice. However, the Council has not drawn my attention to any particular aspect of that guidance which is directly relevant to the specific circumstances of this case.

Conclusion on the ground (a) appeal and the deemed planning application

21. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any

determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the creation of the new hardstanding conflicts with the development plan. I have not been advised of any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

22. Accordingly, the appeal on ground (a) fails and I refuse to grant planning permission for the application that has been deemed to have been made.

The appeal on ground (f)

23. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, in summary the requirements of notice are to completely remove the brick hardstanding, to reinstate the forecourt paving and to reinstate the boundary wall. The purpose of the notice must therefore be to remedy the breach.
24. The appellant is proposing under this ground of appeal to reinstate a boundary wall, albeit of only 300mm height. I accept that this would prevent the parking of cars on the site and therefore overcome one of the reasons for issuing of the notice. However, a wall of that height without metal railings, pillars and a coping stone would not restore one of the elements that made a positive contribution to the character and appearance and which has been lost as a consequence of the breach of planning control. Moreover, failing to reinstate the front boundary wall as it previously existed would not remedy the breach of planning control and would therefore not achieve the purpose of the notice.
25. I therefore conclude that the requirements of the notice are not excessive. Accordingly, the appeal on ground (f) fails.

Conclusion

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

Formal Decision

27. It is directed the notice be varied by:
- deleting the words 'rendered brick boundary wall' at paragraph 5 of the notice and replacing them with the words 'front boundary wall'.
 - deleting the words 'brick hardstanding' at paragraph 5 of the notice and replacing them with the words 'new hardstanding'.
 - replacing the word 'copping' in paragraph 5 of the notice with the word 'coping'.

28. Subject to those variations, 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 Act as amended for the development already carried out, namely an engineering operation comprising demolition of front boundary wall, lowering level of forecourt and creation of new hardstanding to create off street car parking at Land at 50A Haverstock Hill, London NW3 2BH.

Paul Freer

INSPECTOR