
Appeal Decision

Site visit made on 14 November 2016

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 21 November 2016

Appeal Ref: APP/Q5300/C/16/3150540

81 Fox Lane, Palmers Green, London N13 4AJ

- 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 Paul McCarthy against an enforcement notice issued by the Council of the London Borough of Enfield.
 - The enforcement notice, numbered CON/6861, was issued on 24 March 2016.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the unauthorised creation of further hard standing to the front of the Premises (outlined in blue on the attached plan for identification purposes).
 - The requirements of the notice are:
 1. Remove the hardstanding (outlined in blue on the attached plan for identification purposes).
 2. Remove all waste materials from the Premises.
 - The period for compliance with the requirements is 3 months.
 - 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.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the creation of further hard standing to the front of the Premises on land at 81 Fox Lane, Palmers Green, London N13 4AJ referred to in the notice, subject to the following conditions:
 - 1) The hardstanding hereby permitted shall be removed and all materials resulting from the demolition shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the provision or enlargement of a planted bed within the front garden with an area of at least 2.37 sq.m. shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
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- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Ground (a) – the deemed planning application

2. The main issue is the effect of the development on the character and appearance of the Lakes Conservation Area.

Reasons

3. The appeal site is occupied by a semi-detached, two storey dwelling, with a small area between the front elevation of the house and the footway. An Article 4 Direction is in force which removes permitted development rights to remove walls or to construct hard surfaced areas in the front gardens of houses. A number of properties have hardstandings, carried out before the Article 4 Direction came into effect.
4. Many of the houses in the area have front boundary walls constructed in stone, brick or both, behind which are planted front gardens. These make a positive contribution to the attractiveness of this part of the conservation area, complementing the mature street trees along the road. The greenery also contributes to the overall quality of the estate provided by the design and architectural detail of the late Victorian/early Edwardian houses which line this part of Fox Lane. In contrast, those houses where garden walls have been removed and the gardens used for parking, detract from the appearance of the area.
5. The appellant's uncontested evidence is that the entire front garden had, prior to the development being enforced against, been hard surfaced apart from a rectangular patch behind the wall, measuring some 3.9m by 1.87m. The notice appears to have regard to this, by referring only to the "increased area of hard standing" as being harmful.
6. The path leading from the footway to the front door and an area between the drive and the path was previously made of "crazy paving". The path is now constructed of stone paviours, which I consider to be an improvement and more in keeping with the quality materials prevalent in the conservation area. Two planted beds have been provided, a fan shaped area behind the front garden wall and a strip edging the bay on the front elevation of the house. The fan shaped bed is a raised one retained by a small brick wall. As a result of the height of the bed, the planting within it is more readily seen from the public domain than would have been the case with a level bed. The planted strip around the bay is a narrow bed, in which a row of deciduous shrubs are present.
7. Although the planting that has been carried out is of good quality, it is smaller in extent than the previous bed, by the appellant's calculations by 2.37 sq.m.. Whilst the hardstanding has been enlarged, I am not certain that it would be

large enough to allow two cars, other than the very smallest ones, to be parked on the hardstanding at the same time. In weighing up the totality of the development, I acknowledge that there have been a number of aspects which have improved the appearance of the front garden area. However, whilst the net loss of planted area is relatively small, it nevertheless has a material effect in reducing the greenery available in the front garden. Whilst I appreciate that as a lawn, the original bed would have been difficult to mow, it could have been planted instead. In the light of my findings about the valuable contribution that planting makes to the character and appearance of the conservation area, I consider that a larger area of planting would be necessary to mitigate the harmful effect of the loss of the bed as a result of the development.

8. I have therefore given consideration to whether this could be achieved by the grant of planning permission subject to a condition to require the provision of further space for planting. This could be readily achieved either by enlarging the existing beds, or providing new ones, and it would not materially change the nature of the development being enforced against. In my judgement, the carrying out of further works to increase the area of planting would overcome the planning objection to the development and would be a satisfactory means of ensuring that the character and appearance of the conservation area are at least preserved.
9. Subject to this provision, the development would not conflict with saved Policy C30 of the Enfield Unitary Development Plan (UDP), or with Enfield Core Strategy Policies CP28, CP30 or CP3, which all deal with or include provisions relating to design, the built environment or heritage assets. Nor would it conflict with London Plan Policies 7.4, 7.6 or 7.8, which respectively deal with local character, architecture and heritage assets.
10. I shall therefore impose a condition to require that a scheme be submitted to the Council for approval showing the provision or enlargement of a planted bed in the front garden of at least 2.37 sq.m. in area. The purpose of the condition is to require the appellant to comply with a strict timetable for dealing with a scheme for a new or enlarged planted bed which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

Other matters

11. I have taken into account the representations made by neighbours in support of the development, and the benefit that the French drain provides in preventing water discharging onto the highway, but these are insufficient to change my conclusion.

12. I therefore conclude on the main issue, that subject to the imposition of conditions, the proposal would at least preserve the character and appearance of the conservation area, and therefore the appeal on ground (a) succeeds and planning permission is granted.

Appeal on grounds (f) and (g)

13. As the appeal succeeds on ground (a), these grounds do not need to be considered.

Overall conclusion

14. For the reasons given above, the appeal succeeds, planning permission is granted and the enforcement notice is quashed.

JP Roberts

INSPECTOR