
Appeal Decision

Site visit made on 21 February 2017

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 16 March 2017

Appeal Ref: APP/G5750/C/16/3159443
53 Palmer Road, Plaistow, London, E13 8NU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Ms Janet Thomas against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, numbered 16/00179/ENFNOT, was issued on 2 September 2016.
- The breach of planning control as alleged in the notice is "Without planning permission the erection of an area of hard standing".
- The requirements of the notice are:
 1. Demolish the area of hard standing (as shown edged yellow on the photographs attached at Appendix 1).
 2. Remove from the site all debris arising from compliance with the above step.
- The period for compliance with the requirements is three months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(d)¹ and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

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

Procedural matters

1. The representations submitted on behalf of the appellant argue that the flat surfacing of the hardstanding has been demolished leaving only the surrounding retaining walls and foundations. Photographs showing the concrete surface broken up have been supplied to verify this situation and it was apparent at the site inspection that the hard surface layer had been broken up leaving a rubble finish.
2. It is not clear whether any point is being made that this means the notice has been complied with. Nevertheless I consider that what remains, namely the raised ground level in front of the property and the retaining walls around the edges, are part and parcel of the construction of the hardstanding and that this forms one single act of development. Consequently I consider that to comply with the notice it is necessary to remove all the operational development which

¹ The statement supplied on behalf of the appellant includes a ground (c) claim – namely the assertion that the matter set out as the alleged breach in the notice does not constitute a breach of planning control. No arguments to support this claim have been supplied. Instead what is actually asserted is that the development was completed five years before the notice was issued and that on the basis of s171B of the Act no enforcement action could be taken when the notice was issued as a period of 4 years had passed. This in essence is a ground (d) argument. The agent has now confirmed by an e-mail dated 24-02-17 that ground (c) was erroneously pursued and it is accepted that the legal argument advanced should be considered under ground (d).

facilitated the creation of the hardstanding and not just break up the surface as has occurred. Whilst that has gone some way towards compliance it is not in itself sufficient to comply fully. In support of this finding, the hard surface finish could not have been built without the supporting structure as for the most part it would have been floating in mid-air.

Ground (d)

3. The claim for the appellant is that the development was completed by the beginning of 2011 and is therefore immune from enforcement action having regard to the provisions of s171B(1) of the 1990 Act. The Council refute this and have supplied a photograph dated 22 September 2014 which they argue shows the hardstanding as incomplete. In this respect I note that the concrete piers and railings that now exist around the edges of the hardstanding were not in place at that time.
4. With claims of this nature the onus is upon the appellant to produce evidence which demonstrates that what is asserted is likely to be the case on the balance of probability. In this instance there is no evidence at all other than an unsubstantiated claim that the development was completed by the beginning of 2011. There are no photographs to set against that supplied by the Council which tends to indicate that in September 2014 it was unfinished. No builder's quotes, invoices or receipts of payment have been provided which back up the assertion. On the face of what is before me I come to the conclusion that on the balance of probability the development was not completed 4 years before the notice was issued, namely by 2 September 2012. For these reasons the appeal on this ground fails.

Deemed planning application

5. Whilst ground (a) was not ticked on the appeal form at the time the appeal was lodged, the requisite fee for the deemed planning application was submitted thereafter within the required time period. Consequently the deemed planning application falls to be considered.

Main Issues

6. I consider that the main issues are the impact on the visual amenity and character of the street and the effect on flood risk in the locality.

Reasons

Impact on visual amenity

7. The hardstanding has been created by building up the ground that originally sloped down to the front of the property leaving a small gap between a retaining wall and the front wall of the house. As can be seen from one of the photographs it was built with a flat concrete surface which has now been broken up and left with a loose rubble surface. Low piers and railings remain around two sides of surfaced area.
8. On my site inspection I noted that whilst there remain front gardens which are vegetated with hedges, fences or low walls along the back edge of the pavement in this street there are also a number of properties where the frontage has been surfaced in concrete or paving slabs to create an off-street

- parking area. In some cases the ground has been raised to create a level plinth as is the situation at the appeal property.
9. The Council argue that the development has had a detrimental visual impact on the street scene due to the hardsurfacing of the majority of the front garden in concrete and this represents an alien feature contrary to a number of specified policies from The London Plan, Newham Core Strategy (CS) 2012 and the Newham Development Plan Document (DPD) 2016. The appellant's agent counters this asserting that taking account of the various frontage developments that already exist in this street the appeal development is neither out of character nor particularly prominent in the street scene.
10. In my opinion, given that hardsurfaced parking areas have been created in places nearby the development is not inherently out-of-keeping with its surroundings. I accept however that the large expanse of concrete which previously existed created a harsh appearance with no relief across practically the whole frontage. Whilst this has now been broken up what remains is a surface of rubble which is visually unattractive and has the appearance of being unfinished harming the character of the street, contrary to the local and national policy framework that relates to such matters. In its present state I do not find the development to be acceptable and for this reason and in the absence of any clear indication of an acceptable alternative finish I do not consider that planning permission should be granted. It may be that a suitable softer finish such as rolled stone chippings or pavements could be introduced which could render the development acceptable in visual terms.

Effect on flood risk

11. The Council have raised concern that the original concrete surface was impermeable and it is unknown whether the sub-base that still remains, even though the top surface has been broken up, is permeable. Reference is made to Policy SC5 of the DPD which seeks to resist development that adds to surface water run-off into drains as this increases flood risk in the area. For the appellant it is claimed that following the breaking up of the surface the ground is now permeable. However, I noted on my site visit that there appears to be an impermeable plastic membrane beneath the rubble surface and if this is the case it would, for the most part, prevent water draining into the ground beneath and could result on run-off flowing out onto the road and into the highway drains. Whilst the amount may be small in the overall scheme of things it would nevertheless run counter to the objectives of Policy SC5 of the DPD and Policy SC3 of the CS.
12. It may be that with further investigation and negotiation with the Council that an acceptable solution could be reached such as the removal of the membrane and the adding of a wholly permeable top surface. Nevertheless based on my assessment of the present situation I find that the development adds to potential flood risk and this weighs against the grant of planning permission.

Conclusion

13. Given my findings on the two main issues I conclude that planning permission should not be granted. I have considered whether it is possible to impose conditions that would overcome the harm but as this is an enforcement case where the development has already taken place there is no certainty of what solution would be acceptable to appellant and the Council or how it could be

implemented. Having said that it seems, given my findings on the principle, that it may be possible to reach a mutually agreeable solution and the best way this could be achieved is by negotiation and the submission of a planning application supported by the necessary details. Should planning permission be granted for such a solution then having regard to the powers conveyed by s180 of the Act the enforcement notice would cease to have effect in so far as it is inconsistent with that permission.

Ground (f)

14. The argument for the appellant is that the surface has now been broken up which has created a permeable surface of an acceptable finish and that to require the removal of the whole structure is excessive and disproportionate, exceeding what is necessary to remedy any policy concerns. The Council contend that even in its present form the development is visually detrimental to the surrounding area causing injury to amenity. Based on my reasoning above I agree and there is the additional point that if what presently exists were allowed to remain it is unlikely that it would address the drainage objection.
15. The Council also argue that the whole development the subject of the notice is unlawful and cannot be divided into lesser parts. Additionally that only the removal of the entire hardstanding would remedy the breach of planning control and address the harm to amenity and the character of the area as a whole.
16. I consider that it is not possible, based on what is before me, to describe lesser steps which are clear on their face and would clearly overcome the harm that I have identified above. As I have already explained the appellant has the opportunity of approaching the Council to discuss whether an acceptable alternative solution in terms of the surfacing and drainage issues could be achieved and this could be the subject of a planning application. The compliance period set out in the notice is 3 months which should give sufficient time for this to happen and the Council also has the discretion to not enforce the notice immediately after that period expires if it is clear that progress towards a mutually agreeable solution is being made. Accordingly there is no success on this ground.

Overall conclusion

17. 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.

Decision

18. 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.

N P Freeman

INSPECTOR