
Appeal Decision

Site visit made on 21 September 2019

by Diane Lewis BA(Hons) MCD MA LL M MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2019

Appeal Ref: APP/C5690/C/19/3224210

Land at the junction of Duncombe Hill and Brockley Rise, London SE23 1QB

- 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 Investor Alliance Limited against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 13 February 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the installation of a timber hoarding and associated gates on the Land as shown on the Photographs attached.
 - The requirements of the notice are:
 1. Remove the hoarding and associated gates shown on the Photographs attached from the Land by hand or by using hand held non-mechanical tools.
 2. Remove all hoarding posts and any concrete haunching installed on the Land using hand held non-mechanical tools.
 3. Restore the Land to its previous form and appearance by gently loosening and decompacting the soil around the post holes avoiding damage to tree roots and tree protection areas and back filling the holes with good quality topsoil.
 4. Remove all materials, waste and equipment resulting from compliance with requirements 1-3 above from the land.
 - The period for compliance with the requirements is 1 month.
 - 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 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.

REASONS

Ground (a)

2. The main issue is the effect of the timber hoarding and associated gates on the appearance of the land and its surroundings.
3. The land is on a prominent corner at the western end of the residential street Duncombe Hill at its junction with Brockley Rise, a busy street with shops, bus stops, a public house and other businesses. Before the timber hoarding was erected photographs show that the land was a grassed area with a group of trees which made a very positive contribution to the attractiveness of the street scene. The triangular shaped open space, although small, provided visual relief within the urban surroundings and complemented the street trees and larger

- open spaces in the area. Representations on the appeal indicate that the small open space is much valued by the local community.
4. A 'group' Tree Preservation Order (TPO), in respect of one willow, one Norway Maple and 3 crab apple trees on the appeal site, was made by the Council on 9 November 2018 and confirmed without modification on 12 April 2019. In February 2019 a second TPO was made in respect of a sycamore tree on land just outside the hoarding near the Duncombe Hill frontage. This TPO was confirmed without modification in August 2019.
 5. The hoarding is some 2.3 m high constructed of a very basic timber material, painted green. It is sited close to the footways and is set back from the path along the eastern side of the space. The hoarding by reason of its position, materials and height is visually over-dominant. The structure of solid panels affords no degree of openness or transparency. Accordingly the enclosure of the open space has resulted in the loss of the ability of residents, other members of the local community and passers-by to fully appreciate the pleasant greenspace and trees and has severely eroded its amenity value. The development has a very harmful effect on the appearance of the site and its surroundings.
 6. Short lengths of the hoarding recently have been reduced to about a metre high near the junction in response to local concern that the hoarding obstructed visibility but this has made little difference to the visual impact. The appellant disputes that the hoarding has an adverse impact on the protected trees but no evidence has been submitted of any measures taken to ensure that is so, both in the erection of the hoarding and thereafter.
 7. The appellant, as the owner of the land, is seeking a temporary planning permission in order to secure and prevent trespass onto the amenity space and to prevent damage or vandalism to the trees. In addition, the stated intention is that the hoarding would be retained during construction of a proposed development on the land.
 8. However, the appellant has not put forward any planning condition to indicate the length of the temporary period sought. Various types of boundary treatments are available that would serve to define the boundaries to the land without causing visual harm. No evidence has been produced of damage to the space or trees prior to the acquisition of the land. Moreover, no planning permission existed for development of the land when the hoarding was erected. A planning application for housing is under consideration by the Council and therefore whether or not the land would be able to be developed has not been determined. Even if planning permission were to be granted it does not necessarily follow that the scheme would be commenced immediately, if at all. Future construction provides no justification for the hoarding. I attach little weight to these considerations.
 9. In conclusion, the development does not respond to local character and context and fails to achieve the high quality design required by Policy 15 of the Council's Core Strategy (2011) and Policy 30 of the Development Management Local Plan (2014). The development is contrary to the development plan, is unacceptable and should not be approved. Other considerations are not of sufficient weight to indicate that the decision should be other than in accordance with the development plan. The appeal on ground (a) fails.

Ground (f)

10. The issue is whether the requirements are excessive, having regard to the purpose of the notice.
11. The appellant has submitted that a reduction of the hoarding (and fence posts) to 1 metre or less would comply with permitted development rights and considers that such a solution would be preferable than its complete removal.
12. The primary purpose of the enforcement notice is to remedy the breach of planning control, taking account of the visual impact and the relationship of the hoarding to protected trees. Therefore the careful removal of the development and the restoration of the land to its former state are fully consistent with the purpose of the notice and are not excessive.
13. The appellant accepts that the erection of the hoarding and associated gates was carried out as a single operation. It follows that the whole of the development is unlawful, not just the element in excess of what may be constructed under permitted development rights. A reduction in the height of the hoarding would not achieve the purpose of the notice. Furthermore, there is substantial doubt that a replacement fence of 1 metre high would be constructed because the appellant is of the view that such boundary fencing would not prevent access. In addition, a requirement has to be specified precisely. The appellant has not put forward any revised wording for consideration and fails to address the issue of the associated gates, which are a similar height to the hoarding.
14. The appeal on ground (f) fails.

Ground (g)

15. The issue is whether the compliance period of one month is reasonable.
16. The appellant has not submitted evidence to support the case that a period of 6 months would be necessary in order to secure an appropriate contractor to carry out the work.
17. The work would have to be carefully undertaken to avoid damage to the trees but even so the scale of the work would not be substantial. Account has to be taken of the unacceptable impact on the appearance of the locality caused by the breach of planning control. The breach should be remedied without delay, as soon as reasonably possible. The National Planning Policy Framework is clear that effective enforcement is important to maintain public confidence in the planning system.
18. I conclude that the compliance period strikes the right balance and is reasonable. The appeal on ground (g) fails.

Conclusion

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

Diane Lewis

Inspector