The Planning Inspectorate

Appeal Decision

Site visit made on 26 November 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Appeal Ref: APP/U4230/C/19/3223767
Land at 1 Lancaster House, 7-11 Lancaster Road, Salford M6 8AQ

- 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 Mark Hampson against an enforcement notice issued by Salford City Council.
- The enforcement notice was issued on 29 January 2019.
- The breach of planning control as alleged in the notice is: Without planning permission the laying of a hard surface in order to form a car park to the rear of the premises in the approximate position shown hatched on the attached plan A2.
- The requirements of the notice are:
  (i) Remove the hard standing area as shown hatched on the attached plan and remove any foundations, planings, aggregates and materials associated with the laying of the hard standing.
  (ii) Remove from the Land all materials and rubble arising with compliance with the requirement (i) above, and install topsoil to the pre-existing levels and seed the area with grass.
- The period for compliance with the requirements is 180 days.
- 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act, as amended.

Summary of Decision: the appeal is allowed, the notice is corrected and quashed, and planning permission is granted in the terms set out in the Formal Decision.

The Enforcement Notice

1. The enforcement notice at paragraph 1 refers to 1 Lancaster House, 7-11 Lancaster Road, Salford, M6 8AG, as shown red on the attached plan A1 (the "Land"). The reference to 1 Lancaster House would appear to be an error as I note that the appellant only refers to the property as Lancaster House. In addition, the "Land" is shown edged yellow, not red on the attached plan A1. I am satisfied that correcting the notice to refer to the yellow edged plan would not cause any injustice to either the local planning authority or the appellant.

2. The alleged breach of planning control at paragraph 2 of the notice relates to the laying of a hard surface in order to form a car park. However, it is my understanding that there was an existing car park which has been extended to provide extra spaces. The alleged breach would therefore be more accurately described as the laying of a hard surface in order to extend an existing car park. I am satisfied that there would be no injustice to either the local planning authority or the appellant if I were to correct the notice by deleting the words "form a" and substituting them with "extend an existing".

Appeal on ground (a), deemed planning application

Main Issue

3. The main issue in this case is the effect of the development on surface water drainage, with particular regard to flood risk.

Reasons

4. The notice relates to an area of hardstanding which has been constructed at the rear of Lancaster House to create an additional area for car parking. The reasons for issuing the notice relate to concerns that the car park has been constructed in an impermeable material and that there are insufficient measures in place to adequately drain any potential surface water away from the area of the car park and adjoining land.

5. There is no dispute between the main parties that the new surface of the car park is impermeable. The appeal submission is accompanied by a Surface Water Drainage Scoping Report (SWD)[1] prepared on behalf of the appellant. The Council have had an opportunity to comment on it. The SWD concludes that the extended car parking area will result in an increase in the volume of run off and that it is necessary to provide approximately 10m³ of storage to mitigate against the post-development run off rate of 4.20l/s, based on the 1:100 year six hour storm event, with an allowance for climate change. The Council's drainage engineer does not dispute those recommendations. Furthermore, there does not appear to be any dispute between the main parties that given the impermeable nature of the ground conditions in this location, infiltration drainage is unlikely to provide a suitable means by which to discharge surface water.

6. I understand that there is some dispute about whether there has been an increase in flooding at the car park or on neighbouring land since the car park was constructed. However, Policy EN19 of the City of Salford's Unitary Development Plan, 2014-2016 (UDP) makes it clear that where new development would materially increase the risk of flooding, it should incorporate measures or mitigation to reduce that risk of flooding to an acceptable level. The SWD makes it clear that the extended car parking area would increase surface water run-off and therefore adequate provision must be made for the attenuation and discharge of surface water to deal with that increase in volume.

7. Despite the unsuitability of an infiltration drainage system for this site, I have not been provided with any substantive evidence that would lead me to conclude that there would not be an alternative technical solution available to deal with the increased surface run-off and therefore prevent flooding. Indeed, the SWD does suggest some alternatives design solutions, which taking into account the land available within the ownership boundary at Lancaster House would appear to be achievable. In addition, the appellant has indicated that they would be happy to accept a condition to require a suitable drainage scheme to be agreed and provided.

8. I recognise the Council's concern that a scheme may not be forthcoming. However, since the previous planning applications for this development were refused by the Council, the appellant has engaged Hydrology Engineers to

[1] SWD Scoping Report, Prepared by Ambiental, Ref: 2813, dated September 2016.

conduct the SWD. It is on the basis of the evidence and conclusions from this report that the appellant is now willing to undertake the necessary works to provide a suitable drainage solution. I have not been provided with any substantive evidence that would lead me to conclude that that undertaking has not been made in good faith.

9. Furthermore, for the reasons given above and taking into account the advice in the National Planning Policy Framework (the Framework) and Planning Practice Guidance I am satisfied that it would be reasonable and necessary to impose a condition to require the provision of an appropriate surface water drainage scheme to make the development acceptable.

10. I conclude that subject to the imposition of a condition to require a suitable drainage scheme to be prepared, agreed, installed and retained, the development would not have a harmful effect on surface water drainage or increase the risk of flooding. There would not therefore be any conflict with the development plan, and in particular with Policy EN19 of the UDP the aims of which are set out above, nor any conflict with the Council's Flood Risk and Development Planning Guidance, adopted 2008. I also find no conflict with the Framework which seeks to ensure that new development takes full account of flood risk.

Conclusions

11. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the laying of a hard surface in order to extend an existing car park to the rear of the premises in the approximate position shown hatched on the attached plan A2 and as described in the notice.

12. The appeal on grounds (f) and (g) do not therefore fall to be considered.

13. The purpose of condition 1 below is to require the appellant to comply with a strict timetable for dealing with the removal of surface water 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 ("LPA") 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 development would have to be removed.

Formal Decision

14. It is directed that:

- The enforcement notice be corrected by deleting the word "red" at paragraph 1 and substituting it with "yellow".

- The enforcement notice be corrected at paragraph 2 by deleting the words "form a" and substituting them with "extend an existing".

15. Subject to the corrections above, 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 laying of a hard surface in order to extend an existing car park to the rear of the premises in the approximate position shown hatched on the plan A2 and on land at Lancaster House, 7-11 Lancaster Road, Salford M6 8AQ referred to in the notice, subject to the following condition:

    1) The hard surface area hereby permitted shall be removed and any foundations, planings, aggregates and materials associated with its laying shall be removed within 180 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

        i) Within 2 months of the date of this decision a scheme for surface water drainage 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 refuse to approve the scheme or fail 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.

        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.

Elizabeth Pleasant

INSPECTOR