



Appeal Decision

Site visit made on 16 September 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 24 January 2020

Appeal Ref: APP/U5360/C/18/3216388

49 Amhurst Park, Hackney, London N16 5DL

- 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 Amhurst Park Education and Donations against an enforcement notice issued by the Council of the London Borough of Hackney.
- The enforcement notice was issued on 16 October 2018.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the residential Property to a school, the erection of a rear roof extension, rear basement and ground floor extension, excavation of a basement level underneath the rear garden, addition of a front and rear light-well, alterations to the fenestration and the hardstanding of the rear garden space.
- The requirements of the notice are to:
 1. Cease the use of the Property as a school;
 2. Demolish the rear extension at ground floor level;
 3. Remove the rear roof extension;
 4. Restore the windows and doors of the property to its appearance, layout and style that was present before the unauthorised changes were carried out;
 5. Remove the hardstanding from the rear of the property;
 6. Make good all damage to the Property resulting from the removal of the unauthorised works;
 7. Remove from the Property all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice.
- The period for compliance with the requirements is Eight (8) months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) 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 made under section 177(5) of the Act as amended falls to be considered.

Formal Decision

1. It is directed that the enforcement notice be corrected by the deletion of the text under the heading "The Breach of Planning Control Alleged" and its replacement with:

"Without planning permission, the construction of a hardstanding to the rear garden space."
2. Accordingly, by way of this correction, its requirements are now limited to the following:

"Requirement 1:

Remove the hardstanding from the rear garden space of the property."

3. The appeal is dismissed and the enforcement notice is upheld as corrected, and planning permission is refused in respect of the construction of a hardstanding to the rear garden space on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Application for costs

4. An application for costs was made by Amhurst Park Education and Donations against the Council of the London Borough of Hackney. This application is the subject of a separate decision.

Procedural Matters

5. On 29 January 2019, subsequent to the enforcement notice being issued, the Council granted planning permission (ref 2018/4441) for a scheme which has largely regularised a number of the developments cited in the notice; namely the use of the property as a school, the single storey rear extension, the rear roof extension and the installation of new windows and doors.
6. S180 of the 1990 Act says that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as is inconsistent with that permission.
7. Although not indicated on the original appeal form the appellant, in the representations, makes reference to an appeal under ground (b). This ground would be to say that the matters stated in the notice have not occurred as a matter of fact. In this respect the appellant points out that the use has been lawfully implemented and the council could have under-enforced.
8. From the evidence submitted by both parties, and from my findings at the site visit, it is clear that the development, and its various elements specified in the enforcement notice, had been implemented, to varying degrees without the benefit of planning permission at the time the notice was issued. Although a subsequent permission was granted which has largely regularised the planning position I am satisfied that the breach, as alleged, had occurred at the relevant date. Accordingly, an appeal on ground (b) cannot succeed.

Background

9. Although planning permission had been granted in 2014 for the change of use of the property to a school along with various facilitative operational development it was implemented differently to that permitted. The Council, in identifying that the permission no longer applied, then issued the enforcement notice considering that the development being carried out was materially different from that earlier granted permission.

The Appeal on ground (c)

10. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof on matters of fact is on the appellant, and is on the balance of probabilities.
11. Ground (c) assumes the fact of the original development as it occurred at the time of the enforcement notice's issue, so it can only succeed on this basis if that original development does not now amount to a breach of planning control due to a change in the planning control situation.

12. The extant permission 2018/4441 includes various elements and granted permission for the use of the building as a school, a single-storey rear extension, a rear dormer extension, the installation of doors and windows to the building's front and rear, the installation of a permeable play surface in the rear garden and a two-storey side extension. All, save for the final two elements have been completed and the enforcement notice does not refer to the approved two-storey side extension.
13. In the circumstances, the appeal on ground (c) therefore succeeds in relation to those matters for which planning permission has already been granted by the Council. I will therefore correct the enforcement notice, so it relates only to the unauthorised construction of the hardstanding to the rear garden space, with its requirements now limited to the hardstanding's removal.
14. Whilst the appellant makes the point that the hardstanding has been in place for over four years, this is not a consideration under ground (c) but rather a matter to be considered under ground (d) which is not before me. In any event, no direct evidence has been advanced in this respect.

Appeal on ground (a) and the Deemed Planning Application

Main Issue

15. The main issue is the effect of the development on the character and appearance of the area. Given the notice's correction this is with particular regard to the impact on the trees both within and adjacent to the site.

Reasons

16. As mentioned, the deemed planning application (DPA) is now limited to permission sought for the hardstanding laid within the rear garden.
17. A ground (a) appeal and DPA can only seek planning permission for the development constituting the alleged breach of planning control. In this instance, although the enforcement notice, as corrected, requires for the removal of the hardstanding to the rear of property, the DPA cannot reflect the part of the proposal involving its replacement with a permeable play surface, as was part of the scheme then applied for and covered by the extant planning permission. This element of the permission is addressed by a condition imposed relating to ensuring the protection of trees on and adjacent to the site, four of which are subject to a tree protection order (TPO). Further, it is understood that the 2014 permission was also subject to a condition which would have involved appropriate measures being put in place in this regard.
18. The appellant's initial arboricultural assessment report from 2013 identified thirteen trees in near proximity, which includes the four lime trees, statutorily protected by means of the subsequently confirmed TPO. The assessment made recommendations as to any works carried out within the various trees' root protection areas, including the recommended spreading of an evenly graded substance which could be made up with granular, permeable fill, and also measures to avoid localised compaction of tree roots.
19. In support of the DPA the appellant comments that the Council has not produced any evidence to show that the trees the subject of the TPO have been harmed by the tarmac hardstanding laid. However, in the same vein I have not been presented with any compelling evidence from the appellant that the

hardstanding laid adhered to the recommendations made. Indeed, from the representations of both main parties, due to the tarmac's make up and lack of permeability I must agree with the Council as to the likelihood of the works having impacted the earth and caused some damage to the trees' roots. Accordingly, I would consider that the recommendations made to the appellant were not followed.

20. To prevent irreparable harm to these trees it is important that the existing hardstanding should be removed. I note that the 2019 permission is conditional on the operational development being carried out and completed by 29 January 2021 but this does not affect or preclude the hardstanding's removal in accordance with the enforcement notice's requirements.

Conclusion on ground (a)

21. The hardstanding represents an unacceptable form of development, harmful to the character and appearance of the area, with potential detriment to the nearby trees, and is contrary to the design objectives of policy DM1 of the Council's Development Management Local Plan, policy 24 of the Council's Core Strategy and policy 7.4 of the London Plan. The deemed planning application is therefore refused and the appeal on ground (a) fails.

The appeal on ground (f)

22. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or the injury to amenity caused by the alleged development. S173(4)(a) and (b) of the 1990 Act as amended provides that the purposes of an enforcement notice can be (a) to remedy the breach of planning control, including by restoring the land to its condition before the breach took place, or (b) to remedy any injury to amenity which has been caused by the breach. Given the nature of its requirements, when issued, I consider that the enforcement notice's purpose was to remedy the breach, and the notice, as corrected, also serves such a purpose.
23. By way of planning permission 2018/4441, an identifiable fallback scheme now exists. The appellant refers to this permission yet, from his representations, it would appear that he has misunderstood the Council's comment that, given the circumstances, it will not offer any evidence to contend the ground (f) appeal. The Council's approach does not, in itself, remove the notice's requirements to carry out the required steps, namely the hardstanding laid which does not enjoy planning permission.
24. In relation to this one outstanding matter it remains open to the appellant to effect the hardstanding's removal and replace it with a permeable surfacing material in accordance with the extant permission, subject to the relevant condition imposed. Although this would remedy the breach of planning control, ensure protection for the trees, and potentially allow for a satisfactory solution it cannot, for the purposes of this appeal, represent a lesser step that could be carried out to this end. Accordingly, the appeal on ground (f) fails.

The Appeal on Ground (g)

25. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant considers that an eight month period is insufficient time to carry out the steps and believes that a more reasonable period for compliance would be at least two years.

26. The eight month period originally concerned the cessation of the school use and the demolition, removal and replacement of the various operational developments. However, as the corrected enforcement notice now requires only for the hardstanding to be removed I consider that the eight month period is sufficient to allow for the required works to be completed.

27. The appeal on ground (g) therefore fails.

Overall Conclusions

28. For the reasons given above I conclude that, due to the planning position having changed during the life of the appeal, the enforcement notice should be corrected as set out in the Formal Decision. Accordingly, the appeal on Ground (c) succeeds to reflect the extent of planning permission ref 2018/4441. Subject to this correction the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Timothy C King

INSPECTOR