



Appeal Decision

Site visit made on 21 February 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal Ref: APP/N1920/C/19/3237838

3 Newberries Avenue, Radlett, WD7 7EJ

- 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 Laster against an enforcement notice issued by Hertsmere Borough Council.
 - The enforcement notice was issued on 30 August 2019.
 - The breach of planning control as alleged in the notice is; Without planning permission, the raising of rear garden levels, including erection of raised concrete patio to rear western side, and hardsurfacing of front garden.
 - The requirements of the notice are
 1. Reduce the present ground levels in the rear garden back to the pre-2017 levels with corresponding gradient as shown in the attached Estate Agents (Rightmove) sales photographs dated 16 December 2016 (and which is shown on part of the land marked A on the attached site plan)
 2. Completely strip off the unauthorised raised concrete patio to the rear western side (which is shown on part of the land marked B on the attached site plan) and restore that part of the land back to its soft landscaped condition
 3. Completely strip off the unauthorised hard surfacing in the front garden (which is shown on part of the land marked C on the attached site plan) and restore that part of the land to its prior soft landscaped condition.
 4. Remove all materials, debris, waste and equipment resulting from compliance with the requirements above completely from the land and its environs.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in sections 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is varied by deleting 3 months and substituting 6 months as the time for compliance. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused for the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

The appeal under ground (c)

2. An appeal under ground (c) is that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. With an appeal under ground (c), the onus is on the appellant to show that there has not been a breach of planning control.

3. The enforcement notice relates to two distinct areas of the appeal site namely the resurfacing of the land to the front of the appeal dwelling and the raising of ground levels and the erection of a patio area in the rear garden.

The rear garden

4. The appellant alleges that the levelling of the rear garden and the creation of a raised patio area is minor in nature and does not constitute engineering operations requiring planning permission.
5. Section 57 of the Act sets out that planning permission is required for the carrying out of development. The definition of development set out in Section 55 of the Act includes "the carrying out of building, engineering, mining or other operations in, on, over or under land.....". Engineering operations would usually include works that require some degree of pre-planning and are normally but not necessarily supervised by an engineer. Other operations could for example include the formation of earth banks and would not involve the pre-planning and skill to constitute an engineering operation.
6. At a site visit in August 2017, Council officers observed that a low wall had been erected on the boundary with No 1 and excavated garden ground had been raised particularly towards the slope to the boundary with No 1. Although described as minor by the appellant, the Council puts the increase in height to the rear at around 1 metre with a steeper gradient towards the boundary with No 1. The Council has photographs of both the front and rear gardens taken during the construction period. The rear garden photograph illustrates that the whole of the rear garden was stripped with the use of a mini -digger. There is a works van and a portable toilet to the front garden as well as a mound of soil and bricks. In my view, the extent and nature of the works did constitute engineering operations. Even if I had not found that to be the case, the works would fall into the category of other operations. I therefore consider that, as a matter of fact and degree, the rear garden works did require planning permission.
7. I note that the appellant has referred to a decision by a different Council where removal of a large amount of earth at a school did not constitute engineering operations. However, each case has to be assessed on its own merits and in the absence of further information, there is little to compare with this appeal development.
8. The patio area is an area of hard surfacing to the rear of the appeal dwelling. The appellant states that if the rear garden does not require planning permission then neither does the patio. However, I have not found that to be the case. Although the appellant has provided the text of Part 1, Schedule 2, Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(GPDO) which relates to hard surfaces, the land upon which the hard surfacing itself is situated is part of the development where land levels have been altered which requires planning permission.

The hard surfacing to the front of the appeal dwelling

9. Apart from a small section to one side of the front of the appeal dwelling, the front garden has been concreted over to provide car parking space. The appellant states that the hardstanding is to be designed to drain within the site by use of a soakaway and is therefore permitted development. Part 1, Schedule

- 2, Class F of the GPDO states that within the curtilage of a dwellinghouse, a hard surface for any purpose incidental to the enjoyment of the dwellinghouse is permitted development subject to conditions and limitations. Development is subject to a requirement that where the hard surface is situated on land between a wall forming the principle elevation of a dwelling and the area of ground would be greater than 5 square metres either the hard surface is made of porous materials, or provision is made to direct run-off water from the hard surface to a permeable or porous area within the curtilage of the dwelling house. There is no dispute that the relevant area is in excess of 5 square metres and it is made of concrete which is non-porous. The issue therefore is whether there is provision to direct run-off water from the concrete surface to a permeable or porous area within the curtilage of the dwelling house.
10. The appellant has inserted a modest plastic drainage channel along the border of the front driveway with the highway and there is no single access point for vehicles. There is no evidence of where any drainage water caught by the plastic drainage channel would disperse. The absence of any details of the design, the steep nature of the driveway and the size of the hard surface at around 190 square metres does cast doubt upon the drainage channel as provision to direct run off to a permeable or porous area within the curtilage of the dwelling house.
11. As a matter of fact and degree, I consider that the appellant has failed to show that provision is made to direct run off water from the hard surface to a permeable area. The existing drainage arrangement does not therefore fall within the requirements of Class F of the GPDO and the hard surfacing is not therefore permitted development. The appellant has referred to works being under construction and not yet complete, nevertheless for the purposes of permitted development, I must consider the development that currently exists.
12. To succeed on a ground (c) appeal, the appellant would have to show that the matters alleged in the notice did not constitute a breach of planning control. However, development has taken place which does not fall within permitted development rights and does not have express planning permission. The ground (c) appeal must therefore fail.

The appeal under ground (a) and the deemed planning application

13. The main issues are (i) the effect of the development on the character and appearance of the area and the appeal dwelling with regard to the rear patio and the hard surfacing to the front of the appeal dwelling (ii) the effect on the living conditions of the occupiers of No 1 Newberries Avenue with regard to the raised garden levels to the rear and (iii) whether or not the rear patio and the front driveway result in flood risks.

Character and appearance

14. The appeal dwelling is situated on Newberries Avenue which is a residential road where dwellings are largely detached with front gardens. The appeal dwelling is in a prominent location as it is on a bend in the road and close to the junctions with Shenley Hill and Canons Close. The appeal dwelling falls away steeply from the front of the dwelling to the pavement as well as Newberries Avenue sloping upwards from west to east all of which adds to the appeal dwelling's prominence. Particularly to the appeal site side of the road, dwellings largely have both modest drives and a lawned front area with soft

landscaping with a dividing brick wall. Materials used for driveways are commonly block paving or gravel with traditional modest brick wall boundaries with the pavement.

15. The sales particulars of the appeal dwelling from 2016 include a photograph of the front of the appeal dwelling. Prior to the development taking place, the front garden was largely lawn with mature trees other than a path to the front door and access to the garage to the side of the dwelling. There was a modest brick wall on the front boundary. The lawn and the majority of the brick boundary have been removed and replaced with concrete. There are sections of wall painted white to the front boundary but most of the front boundary is open with just the plastic drainage channel along the boundary with the pavement.
16. The appellant states that the driveway is still under construction and the appellant is considering incorporating a new green area of either grass or landscaping to the side. Any planning permission granted under ground (a) must relate to the existing development or part of it and there is a lack of certainty about the appellant's future proposals despite submitting a retrospective application for planning permission in October 2018. Any alternative proposals would need to be subject to consultation through the planning process.
17. The concrete driveway is incongruous and out of keeping with the character and appearance of the appeal dwelling and the surrounding area.
18. The patio area is an area of concrete hardstanding which is a continuation of the existing garden. Its location to the rear of the appeal dwelling does however mean that views of the rear patio beyond the appeal dwelling are limited. Nevertheless, the materials used and the design of the concrete hardstanding are not in keeping with the character and appearance of the appeal dwelling.
19. In conclusion, both the front hard surfacing and the patio area harm the character and appearance of the appeal dwelling and the front driveway also harms the character and appearance of the surrounding area. The development therefore conflicts with Policies SP1 and CS22 of the Development Plan Document Core Strategy Adopted January 2013 (the Core Strategy) which amongst other things, refer to high quality design and taking advantage of opportunity to improve the character and quality of an area. It would also not accord with paragraph 130 of the National Planning Policy Framework (the Framework) which refers to refusing poor quality design for similar reasons. It would also be in conflict with Policy SADM30 of the Site Allocations and Development Management Policies Plan Adopted November 2016 which also refers to high quality design.

Other Matters

20. The appellant has referred to levelling of other gardens that has taken place in the past due to the different land levels across nearby dwellings both within each garden and across the rear gardens Whilst that may be the case, I have no information as to when any work in neighbouring gardens was carried out, and whether or not work had the benefit of planning permission. I do not therefore find the relationship with dwellings where levelling work has been carried out to be directly comparable with the development.

Living conditions of No 1 Newberries Avenue

21. No 1 Newberries Avenue (No 1) is a detached dwelling which is to the west of the appeal dwelling. The estate agent particulars show a mature hedge previously formed the boundary between the appeal dwelling and No 1 at the rear. The difference in levels between the appeal dwelling and No 1 is clearly illustrated on page 9 of the appellant's statement with the wooden fence on the boundary of No 1 being only partially visible from the garden of the appeal dwelling. Whilst there is still some hedging on the shared boundary, part of the hedging has been replaced with what the Council describes as a low lying wall. There are extensive views of the outside space of No 1 particularly from the patio area of the appeal dwelling where there is no planting. The section of planting that replaced a section of the mature hedging is not of the same density or height and does not therefore provide the same element of privacy that exists where the original hedge remains.
22. The increase in garden levels combined with the loss of the mature hedging does result in significant overlooking and loss of privacy for the outdoor space of the occupiers of No 1. The appellant has suggested that a condition could be imposed to require additional landscaping and screening. However, no further details are provided to enable the planning merits of any such measures to be assessed.
23. I therefore do find that the development does cause harm to the living conditions of the occupiers of No 1 due to loss of privacy and overlooking. The development is in conflict with Policy SADM30 of the Site Allocations and Development Management Policies Plan 2016 (the Plan 2016) which, amongst other things, refers to development having limited impact upon neighbours with regard to privacy. I find Policies SP1 and CS22 of the Core Strategy to be less relevant to the issue of neighbour amenity.
24. The appellant has made comments upon all of the issues raised in the surveyor's report commissioned by the occupiers of No 1 dated the 16 December 2019 including matters outside the Council's reasons for issuing the notice. I have had regard to the comments made by the appellant where they relate to overlooking and privacy as referred to in the report and the Council's reasons for issuing the notice but they do not alter my finding of harm to living conditions.

Risk of Flooding

25. The lack of drainage for the hardstanding to the front of the appeal dwelling has already been addressed under the ground (c) appeal. The appellant has suggested that the issues raised by the Council could be addressed with a reasonable planning condition. However, if the current concrete surface is not the proposed final finish to the driveway then it is unclear what the proposed finish would be how the finished surface would be drained. Similarly, the appellant has suggested that there may be future amendments and a plan is included in page 13 of the appellants statement. Proposed drainage is shown as being wider than existing drainage and a green area is shown as well. There is currently a lack of certainty therefore as to what is proposed and no conditions have been suggested that would address this issue, and there has been no consultation on any scheme that varies from what currently exists.

26. No further information has been provided as to how the hardstanding at the rear is drained. As the hard surface is non-porous and no drainage details have been provided, I cannot be satisfied that the hard surfacing is adequately drained.
27. I do therefore find that the development does fail to take measures to reduce the risk of localised flooding and surface run-off. It would therefore be contrary to the principles of the Framework, Policy CS16 of the Core Strategy and Policies SADM14 and SADM15 of the Plan 2016 which collectively seek to ensure that measures are taken to ensure that there is no increased risk of flooding.
28. I therefore find that the ground (a) appeal is dismissed and the deemed planning application fails.

Ground (g)

29. Whilst, there is no ground (g) appeal before me, it is within my powers to review the period of compliance if I consider it to be appropriate. In light of the ongoing Covid-19 crisis and current restrictions, I have sought the views of the parties on the compliance period. Whilst the appellant has suggested a period of 12 months, I do consider 12 months to be an excessive period having regard to the nature of the works required. Whilst the Council has suggested 9 months, I have found that the development does harm the living conditions of occupiers of 1 Newberries Avenue. On balance, I therefore consider that a compliance period of 6 months would be appropriate in the circumstances having regard to the nature of the work and the ongoing harm. The Council also has the power to extend the compliance period under Section 173A(1)(b) of the 1990 Act if they consider that there are good reasons to do so.

Conclusion

30. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation for the period of compliance and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

E Griffin

INSPECTOR