



Appeal Decision

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 27 May 2020

Appeal Ref: APP/T5150/C/19/3238200

96 Dartmouth Road, London NW2 4HB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Michael Caunter against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 22 August 2019.
- The breach of planning control as alleged in the notice is without planning permission, the demolition of brick boundary wall and four pillars and the erection of new front boundary wall, railings, electric gate and three pillars.
- The requirements of the notice are:
 1. Remove the front boundary wall, all pillars, railings and electric gate.
 2. Rebuild four pillars ensuring they are designed in accordance with 'PLAN A' attached to this notice, ensuring that they are installed in the same location as the pillars shown in 'PHOTOGRAPH A' attached to this notice.
 3. Erect a four brick course front boundary wall between two of the left hand pillars as you face the property. Install a gate in between the two middle pillars ensuring that it is not higher than the pillar shown in 'PHOTOGRAPH A'.
 4. Plant a privet hedge behind the four course brick boundary wall.
 5. Remove the hardstanding behind the pillar adjacent to the driveway, as shown in 'PHOTOGRAPH A', so that there is a strip of soft landscaping in between the pathway and the driveway. Turf over the strip with grass or plant Lavender Angustifolia, in accordance with 'PLAN B' attached to this notice.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (f) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available. The appellant and the Council have agreed to the appeal proceeding on this basis.
2. In their evidence, the appellant seeks to show that there has been no harm to the significance of the designated heritage asset; the Mapesbury Conservation Area. However, there is no ground (a) appeal and associated application for deemed planning permission, so I cannot take the planning merits of the development into account. Similarly, the comments from interested people are not relevant insofar as they relate to planning merits.

Application for costs

3. An application for costs was made by Mr Michael Caunter against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

The appeal on ground (b)

4. In order for the appeal to succeed on ground (b), the appellant must show on the balance of probability that the matters alleged in the notice have not occurred as a matter of fact.
5. The appellant accepts that works have been undertaken to the front of the property which, it is explained, resulted following damage to the boundary in 2017. However, it is argued that the breach of planning control identified in the notice refers to pre-existing boundary treatment and hardstanding, which has not been in place since 2008 when the property was purchased.
6. In support, a street view image (dated 2008) and images from the sales particulars (dated 15 September 2008) have been provided. The street view image shows a relatively wide driveway, with brick pillars either side of the entrance and a further pillar delineating a pedestrian access, and a low front boundary wall with a hedge behind. The later sales image shows that the middle pier had been removed and the driveway laid in blocks, aside from a narrow strip to the side and an area of lawn in front of the bay window. It is claimed that iron railings were also present, but these are not evident on the photographs due to the hedge. The appellant states that this configuration was maintained until 2017, as shown in street view images dated 2012, 2014 and 2017. After the damage to the boundary, the appellant explains that the pillars and wall were rebuilt, the railings and block paving were replaced, and a new gate was installed.
7. The appellant accepts the allegation insofar as it relates to the - *the erection of new front boundary wall, railings, electric gate and three pillars*. Hence, the appeal on ground (b) must fail. The apparent dispute between the main parties, in respect of the numbers of pillars that existed before the works were carried out, could be resolved if I were to correct the allegation to remove the word "four". This would require a consequential correction to the second requirement. I am satisfied that I can make these relatively minor corrections without injustice as the substance of the notice remains unaffected. I note that the Council accepts the reference to "four" pillars is a typographical error.

The appeal on ground (d)

8. In order to succeed on ground (d), the appellant must show on the balance of probability that the matters alleged were substantially completed four years prior to the issue of the notice, such that it is too late for the Council to take action. The relevant date is 22 August 2015.
9. The appellant acknowledges that the works alleged took place sometime in 2017. Therefore, they could not have been substantially completed four years prior to the service of the notice and the appeal on ground (d) must fail.

The appeal on ground (f)

10. Section 173(4) of the 1990 Act as amended indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred. The second is to remedy any injury to amenity which has been caused by the breach. In this case, the reasons for issuing the notice refer to the effect of the development on the character and appearance of the area, in particular, the Conservation Area. It is apparent that the purpose of the notice is to remedy the breach of planning control. What must be considered is whether the requirements of the notice exceed what is necessary to achieve that purpose.
11. Where development has been built without planning permission the statutory purpose behind the notice can only be achieved through the removal of the unauthorised development and the restoration of the land to its condition prior to the breach. There is no statutory power to require the appellant to undertake works which would result in an improvement to that previous condition.
12. In this case, the Council has drafted the requirements with precision, with reference to plans submitted in connection with a planning permission (Ref 06/2038) and a photograph. I must consider whether the plans and photograph are an accurate representation of the condition of the land prior to the breach.
13. Photograph A appears to be taken from a 2008 street view image. The configuration of the pillars and driveway corresponds with a similar image submitted by the appellant. I am satisfied it represents the situation accurately and that its inclusion in the requirements is necessary for purposes of clarity. However, the additional reference to Plans A and B is not necessary as the photograph provides an adequate level of detail. Moreover, Plan A refers to brick samples, the details of which are not specified, which could lead to uncertainty. Plan B includes a landscaping scheme which was not in evidence from Photograph A.
14. In view of this, I consider that the inclusion of the approved Plans A and B is excessive and goes beyond what is necessary to remedy the breach. Therefore, I will vary the requirements by the deletion of steps 2 – 5 inclusive and their replacement with a single requirement to “restore the land to its previous condition, as shown in Photograph A attached to the Notice”.
15. To this limited extent, the appeal on ground (f) succeeds.

Conclusion

16. For the reasons given above, I conclude that the requirements are excessive to remedy the breach of planning control and I shall vary the enforcement notice prior to upholding it. The appeal under ground (f) succeeds to that extent.

Formal Decision

17. It is directed that the enforcement notice is corrected by:

the deletion of the word "four" before "pillars" in 'Schedule 2 – the alleged breach of planning control';

and varied by:

the deletion of requirements 2 – 5 inclusive and the substitution of the following requirement - "restore the land to its previous condition, as shown in Photograph A attached to the Notice".

18. Subject to this correction and variations the enforcement notice is upheld.

Debbie Moore

Inspector