



Appeal Decision

Site visit made on 14 July 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2020

Appeal Ref: APP/T5150/C/19/3232341

95A-D Chichele Road, London NW2 3AT

- 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 Mohammad Hasan Ramzan of Ameeeeerah Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 31 May 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of meter box under the front bay window on the front elevation and the installation of hardstanding to the front garden.
 - The requirements of the notice are:
 - Step 1 Remove all hardstanding at the front of the premises.
 - Step 2 Remove all materials associated with the hardstanding from the premises.
 - Step 3 Remove the meter box under the front bay window and remove all associated paraphernalia with this meter box from the front elevation of the premises.
 - The period for compliance with the requirements is 4 months.
 - 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.
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Decision

1. The appeal is allowed in part and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for part of the development already carried out, namely the installation of hardstanding to the front garden, on land at 95A-D Chichele Road, London NW2 3AT, referred to in the notice.
2. Otherwise the appeal is dismissed and the notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) for the installation of a meter box under the front bay window on the front elevation.

Preliminary Matter

3. The appellant disputes that part of the breach of planning control has occurred as a matter of fact. Yet no appeal has been made on ground (b) and it is clear from all of the evidence available to me that the breach of planning control alleged in the notice has occurred as a matter of fact and I have determined the appeal on this basis.

Reasons

The ground (c) appeal

4. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. The burden of proof in a ground (c) appeal is on the appellant.
5. There is no evidence in this case that planning permission has been granted for the hardstanding or the meter box. The appellant states the hardstanding is a like-for-like partial replacement utilising an identical material which due to the passage of time has since become lawful.
6. Whilst what hardstanding existed previously may have been lawful due to the passage of time, the appellant accepts that at the time the enforcement notice was issued it was not too late for the Council to take enforcement action on what exists now.
7. There is no evidence in this case that the meter box does not require planning permission. Nor is there any evidence that the new area of hardstanding which exists now does not require planning permission, notwithstanding that the replacement may closely reflect what existed previously, which is a matter for consideration in the ground (a) appeal, below. In my judgement, from the evidence available, the works which have been carried out go beyond repair.
8. The replacement of hardstanding constitutes a building operation pursuant to section 55(1) of the 1990 Act, and, pursuant to section 55(1A) this includes rebuilding and other operations normally undertaken by a person carrying on business as a builder. The meter box has been moved or replaced to a new position. This materially affects the external appearance of the building pursuant to section 55(2)(a) and is a street frontage alteration for the purposes of the Article 4 Direction that the property is subject to. Considering all of the above points, the appeal on ground (c) fails.

The ground (a) appeal

9. The main issue in the ground (a) appeal is the effect of the development on the character and appearance of the area, including the Mapesbury Conservation Area within which the appeal site is situated. The conservation area is a designated heritage asset. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.
10. The area is characterised by houses, some of which have been converted into flats. These buildings have deep, well sized front gardens which allow planting that softens the appearance of the building frontages. The gardens are part of the conservation area's significance. A number of front gardens in the area have been hard surfaced to provide car parking on the frontage. In some instances, whole front gardens have been hard surfaced to provide off-street parking.
11. Amongst other things, Policy DMP1 of the Brent Development Management Policies 2016 (the DMP) states that development will be acceptable provided it is of a design that provides high levels of amenity, complements the locality

and is conserving or enhancing the significance of heritage assets and their settings.

12. Policy DMP7 of the DMP states, amongst other things, that proposals for or affecting heritage assets should sustain and enhance the significance of the heritage asset, its curtilage and setting, respecting and reinforcing the street scene and frontages and contributing to local distinctiveness and character by the use of appropriate materials.
13. The Mapesbury Conservation Area Design Guide 2018 (the Design Guide) states that any new hard surfaces should be formed using traditional, permeable materials. My attention has been drawn to the Residential Extensions & Alterations Supplementary Planning Document 2018 (the SPD). In relation to parking in front gardens it contains detailed requirements but it clearly states these are for when planning permission is required for a dropped kerb. This is not the situation in this case so I do not find this content of the SPD applicable in this instance.
14. The hardstanding is constructed of concrete. This is not a traditional or permeable material and particularly limited space has been left for the provision of any soft landscaping. However, it is clear from the evidence before me that the front garden of the appeal site has been entirely covered by concrete for many years prior to its replacement. I give substantial weight to this fact as a material consideration in this case, notwithstanding the content of the planning policy sources noted above and representations which have been made relating to a lack of soft landscaping.
15. Whilst the hardstanding which has been laid does not enhance the character or appearance of the conservation area, the statutory requirement of preservation can be achieved by development which leaves the character or appearance of the conservation area unharmed and this is the situation in this case in respect of the hardstanding, given what it has replaced. No conditions have been suggested relating to the hardstanding nor do I consider any are necessary.
16. The Council has drawn my attention to bollards and bin enclosures on the appeal site. But these are not identified in the breach of planning control alleged in the notice so they are not before me in this appeal.
17. In respect of the meter box, the evidence indicates the site previously had a meter box on the front elevation. But it has been relocated from a flank elevation of the bay window to its front face. The appellant considers it does not appear overly prominent and is generally hidden from wider view. But I do not accept this as it remains clearly visible through the gap between cars parked on the front garden. This is even more so when no cars are parked here, despite the meter box being coloured to match the painted fascia of the building.
18. Given the size and scale of the meter box I consider it causes less than substantial harm to the character and appearance of the conservation area. Nevertheless, any harm to the significance of a designated heritage asset should require clear and convincing justification and in accordance with paragraph 196 of the Framework, I must weigh the harm against the public benefits. But no public benefits have been suggested to outweigh the harm to the conservation area.

19. I conclude that the meter box harms the character and appearance of the area including the Mapesbury Conservation Area. So it does not comply with the heritage policies of the Framework, Policies DMP1 and DMP7 of the DMP, or the SPD or the Design Guide in this regard. I conclude that the ground (a) appeal succeeds in respect of the hardstanding but fails in respect of the meter box.

The ground (f) appeal

20. The appellant's ground (f) case focusses on the hardstanding. But as I am allowing the hardstanding on ground (a) the appeal on ground (f) does not need to be considered in this regard. Whilst the notice may not suggest where the meter box should be repositioned to, there is no need for it to do so.

The ground (g) appeal

21. The appellant has requested 6 months to enable funds to be raised to comply with the notice rather than the 4 months which has been specified in the notice. Given my findings above relating to the hardstanding, only Step 3 of the notice will need to be complied with. I consider 4 months is a reasonable period of time to comply with what is a relatively straightforward single step and there is no evidence in this case that hardship means the period for compliance should be extended. As such, the appeal on ground (g) fails.

Conclusion

22. For the reasons given above I conclude that the appeal should succeed in part only, and I grant planning permission for the installation of hardstanding to the front garden. But otherwise I uphold the notice and refuse to grant planning permission for the installation of a meter box under the front bay window on the front elevation.
23. Section 180(1) of the 1990 Act provides that where, after the service of an enforcement notice, planning permission is subsequently granted for the same development or some part of it, the permission overrides the notice to the extent that its requirements are inconsistent with the planning permission but the notice does not cease to have effect altogether. I place reliance on section 180 in this case, to mitigate the effect of the notice so far as it is inconsistent with the planning permission granted by this decision.

L Perkins

INSPECTOR