
Appeal Decision

Site visit made on 24 September 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref: APP/H5960/C/20/3246250

10-12 Salcombe Gardens, 57 Clapham Common North Side, SW4 9RY

- 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 N Kusturovic of Gladbrook Developments Limited against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The enforcement notice was issued on 18 December 2019.
 - The breach of planning control as alleged in the notice is the demolition of front boundary wall, use of part of front garden as car park, laying of concrete hardstanding, relocation of refuse storage, erection of raised platform and retaining brick wall in front garden at the property.
 - The requirements of the notice are:
 1. Remove the unauthorised brick pillars and reinstate the front boundary wall to match in facsimile the previous existing wall.
 2. Cease the unauthorised use of parts of the garden as car park.
 3. Remove the unauthorised concrete hardstanding and brick boundary wall (with no. 9) in the front garden and ensure that any remedial works accord with the approved landscape plans (our ref: 2015/0551).
 4. Remove the unauthorised raised ground level, retaining brick wall, flower beds and foot path in the garden and ensure that any remedial works accord with the approved landscape details (our ref: 2015/0551) and re-instate the front garden gradient to match previous existing gradient.
 5. Relocate the bin store to its approved location (behind front boundary wall/hedge) as shown on approved landscape plans (our ref: 2015/0551).
 6. Remove from the site all debris arising from compliance with steps 1 to 5.
 - The period for compliance with the requirements is twelve (12) weeks.
 - 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 dismissed and the enforcement notice upheld.

Applications for costs

2. Applications for costs were made by Mr N Kusturovic against the Council of the London Borough of Wandsworth and by the Council of the London Borough of Wandsworth against Mr N Kusturovic. These applications are the subject of a separate Decision.

The Enforcement Notice

3. Some of the matters raised by the appellant challenge the validity of the notice. Although the alleged breach of planning control and some requirements could be expressed a little clearer, the notice enables the appellant to know

what matters alleged constitute the breach of planning control and what he must do to remedy it. Under ground (c) I consider whether the matters alleged in the notice do not constitute a breach of planning control and under ground (f) I consider the appellant's concerns that the steps exceed what is necessary.

The appeal on ground (c)

4. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The appellant argues that the front garden is ancillary to the use of the building as self-contained flats and its use for parking ancillary to these flats is not a material change of use. In summary, the appellant acknowledges that the enforcement notice may attack the operational development associated with the use for car parking, but there is no material change of use in its own right and therefore no breach of planning control in this respect.
5. The alleged breach of planning control and the reasons for issuing the notice refer to the Council's contention that the development has occurred without the benefit of planning permission and within the last four years. Consequently, it is clear to me that the notice attacks the operational development that has occurred. Although the notice includes the words "*use of part of front garden as car park*", the breach does not relate to a material change of use of the land but rather describes the purpose to which part of the operational development would be put. Indeed, there is no argument from the Council that such a material change of use has occurred. As far as I am aware based on the evidence before me, the front garden has and will continue to be used for purposes ancillary to the principal residential use of the property.
6. There is no dispute between the appellant and the Council that the land to which the enforcement notice relates will remain in residential use. The fact that part of it is proposed to be used for car parking does not change that.
7. The appellant also contends that the raised platform is the top of the basement that has planning permission and therefore the enforcement notice cannot or seek to remove it. The appellant states that the raised platform in question projects out just below the level of the ground floor of the property and "*accords with the approved section for planning permission reference 2014/1701*". The relevant drawing is drawing number 04-001 dated 31 July 2013. However, the appellant acknowledges that the approved drawing did not take account of the sloping ground level to the street and as a result the basement constructed is actually lower than that permitted with reference to the floor level of the existing building.
8. The development as constructed does not benefit from planning permission as it does not accord with the approved plans which show that the basement would not create a raised area in excess of 0.3 metres in the front garden area immediately adjacent to the frontage of the building. Photographic evidence and my own observations on site confirm that the top of the basement remains just below the internal ground floor level of the property, but that has been achieved by constructing a raised platform area in excess of 0.3 metres in height in the front garden. The enforcement notice is not directed at development that has been previously approved, but rather the development that has been implemented otherwise than in accordance with the approved scheme which does not include the erection of a raised platform, as described by the Council.

9. The notice also alleges that the relocation of refuse storage as part of the breach of planning control. I agree that "relocation" is not in itself an act of development within the meaning of s55 of the Act. However, case law¹ tells me that the key question to ask is whether the description used tells the appellant what he has done wrong and what he must do to remedy it. The appellant states that this is not a matter of pettifoggery; but neither does he contend that he does not know what he has done wrong with particular reference to the refuse storage - he knows that the approved landscaping scheme includes open storage and he also knows that instead an enclosed structure has been erected for the purpose of storing bins. In addition, the appellant does not advance any argument that this part of the operational development has not occurred nor does he argue that the construction of the enclosed bin structure operation does not require planning permission; merely that it is not accurately described. The requirements of the notice refer to the need to relocate the bin store to its approved location and, moreover, clarifies that the bin store should accord with the approved landscape plans.
10. Although the alleged breach could have been described more accurately, the notice does accurately convey the extent of the operational development that has occurred and there is no reason to correct the notice.
11. The appeal on ground (c) fails.

The appeal on ground (a)

12. The ground of appeal is that planning permission should be granted. The main issues are whether the development:
- i. preserves or enhances the character or appearance of the Clapham Common Conservation area; and
 - ii. is prejudicial to highway safety.

Conservation Area

13. The appeal site is located within the Clapham Common Conservation Area (CCCA) which incorporates a wide area, including the western part of the common and a large number of houses that surround it. The properties in the vicinity of the appeal site are constructed in a range of materials and styles, but mainly include large terraced houses and other buildings. The CCCA is defined by the wide open space of Clapham Common and the houses that surround it, many of which are grand. Many of the properties in the locality are set back from the road with front garden areas set behind clearly defined boundaries which include railings, hedges, walls and fences. Front gardens and their boundaries are an important part of the character and appearance of the CCCA. The Clapham Common Conservation Area Appraisal and Management Strategy (CCCAAMS) states that these should not be sacrificed to extensive hard standing. The well-established and well-preserved buildings and their associated spaces reflect the historic development of the Common and its surrounding residential areas.
14. The appeal property is part of a three storey terrace that faces directly onto Clapham Common. It is characteristically set back from the road and has a generous front garden area. The property frontages in this locality are

¹¹ Miller Mead v MHLG [1963] 2 WLR 225

relatively uniform being characterised by low walls with brick piers and hedging above. The uniformity of the boundaries is an attractive feature that contributes positively to the character and appearance of the Conservation Area.

15. The development that has occurred has involves removing most of the front wall and the hedge, creating a gap in the otherwise continuous boundary frontage in the area, including the properties on both sides. The gap is conspicuous in the street scene and at odds with its surroundings, harmfully disrupting the uniformity of this part of the residential terrace. Furthermore, the gap exposes the development that has occurred behind the frontage, including the hard standing car parking area, paved surfacing and the brick retaining wall. Vehicles parked on the hard surface area adjacent to the highway would be very clearly visible from the public realm and would be prominent features within the otherwise attractive street scene. The development therefore appears as a stark and dominant feature which unacceptably contrasts with its historic surroundings.
16. The covered bin store is situated relatively close to the highway frontage and has a simple design, incorporating pale rendered external walls with wooden doors and a grey roof. I do not disagree with my colleague Inspector who concluded that this would not be harmful to the character and appearance of the CCCA in isolation. In accordance with s177(1) of the Act I can allow planning permission for the whole or any part of those matters constituting the alleged breach of planning control. In certain circumstances I could therefore approve the bin store; however, leaving it in place is not compatible with the requirements to implement the approved landscaping scheme, for example. Therefore, as part of the overall requirements of the breach it is not appropriate to grant permission for the bin store on its own, either in its current colour or in an alternative colour as suggested by the appellant.
17. The appellant also suggests that no harm arises from the low boundary walls or the planter which could be reduced in height. However, the overall requirements of the notice are to reinstate the garden to its previous existing gradient and to ensure compliance with the approved scheme. The lower walls are not part of the approved scheme and furthermore there is insufficient evidence before me that the walls in question could be retained in the event that the other requirements of the notice are complied with. As such it would not be appropriate to approve them in isolation because, as part of the wider scheme they contribute to the incongruity of the property frontage and resultant failure to preserve or enhance the character or appearance of the CCCA.
18. The raised platform and associated retaining structure are visually prominent from the immediate surroundings and from the public realm. Some soft landscaping may be used the screen the raised platform and associated prominent retaining wall, but that would not mitigate the harm caused by the alteration in levels across the frontage of the property which has contributed towards creating an incongruous development at odds with the relatively simple and uniform character of the gardens, locally. I do not dispute that additional planting or landscaping could reduce the visual impact, but not sufficiently to mitigate the harm to the character and appearance of the area that has arisen from the alterations that have been carried out. The raised platform and retaining wall highlight the level changes that have occurred

across the site as part of the unauthorised development and contrast greatly with other gardens in the vicinity

19. The appellant also suggests that the lower level closest to the road could be laid to grass with paving and a pathway. Again, such a measure may in part mitigate some of the harm that has resulted from the development that has occurred. However, it would not fully mitigate the overall harm that has been caused and would represent an incremental change to the visual appearance of the site which would remain at odds with its surroundings and incongruous in its Conservation Area setting. The extensive hardstanding area that has been created conflicts directly with guidance for the CCCA which specifically seeks to avoid such features in the historic setting.
20. Consequently, although the appellant argues that some of the individual parts of the alleged breach do not in themselves cause harm to the character and appearance of the CCCA, they are part of a scheme that is harmful and contribute to the harm that has been caused by the development that is at odds with its historic surroundings. In addition, there is insufficient evidence before me that the individual components of the development identified by the appellant could actually be implemented in the context of the wider requirements of the Notice which relate to the removal of the front boundary wall, car parking use and the approved landscape scheme under permission reference 2015/0551.
21. For the reasons set out above I conclude that the development fails to preserve or enhance the character and appearance of the CCCA. This harm would be less than substantial in the context of the National Planning Policy Framework. However, insufficient public benefits have been demonstrated that outweigh this harm. Therefore, the development is contrary to policies PL1 and IS3 of the Wandsworth Core Strategy (2016), Policies DMS1, DMS2 and DMH5 of the Wandsworth Development Management Policies Document (2016), the Housing Supplementary Planning Document (November 2016), the Clapham Common Conservation Area Appraisal and Management Strategy and guidance in the Framework.

Highways

22. The appeal site has access directly onto Clapham Common North Side which is a busy main road. The appeal site is close to a pedestrian crossing, school entrance and an electric vehicle charging point. There was a high number of vehicle and pedestrian movements in the immediate vicinity of the site at the time of my mid-week site visit. The number of those movements from various directions in this particular location would give rise to a significant risk of accidents should reversing manoeuvres be attempted from the appeal site. There is insufficient evidence before me to show that there is manoeuvring space within the appeal site which would allow vehicles to enter and exit the site in forward gear.
23. For the above reason I conclude that the development is prejudicial to highway safety. As such it is contrary to Policy DMT 1 of the Wandsworth Development Management Policies Document (2016), which seeks to ensure that new development is served by safe and suitable access.

The appeal on ground (f)

24. The ground of appeal is that the steps required in the notice to be taken exceed what is necessary to achieve its purpose. The purpose of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the removal of all elements of the unauthorised development and cessation of the use of parts of the front garden for car parking, the purpose in this case is clearly to remedy the breach. Leaving any part of it in place would not achieve that purpose. In this respect, the appeal on ground (f) fails.
25. Nonetheless, I am mindful that enforcement action is intended to be remedial and not punitive. With a ground (a) appeal included it would be possible to grant planning permission for part of the development under s177(1) of the Act. The appellant has set out why particular steps in the notice are excessive and consequently, under ground (a) I have considered these. However, as I have set out above, the enforcement notice attacks the operational development that has taken place on site and requires remedial works to remedy the breach of planning control and ensure that those works accord with the approved landscape details. Lesser steps as suggested by the appellant would not be excessive to achieve the purpose of the notice. The appeal on ground (f) fails.

The appeal on ground (g)

26. The ground of appeal is that the time given to comply with the requirements is too short. Twelve weeks specified in the notice would be sufficient to undertake the requirements of the notice and remove from the site debris arising with compliance with the steps. The six month compliance period suggested by the appellant would be excessive having regard to the ongoing harm caused by the development. Given my concerns with respect to both the character and appearance of the area and highway safety I consider that the period of twelve weeks is sufficient in this case and should not be extended. The appeal on ground (g) fails.

Conclusion

27. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant permission on the deemed application.

Formal Decision

28. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A A Phillips

INSPECTOR