



Appeal Decision

Site visit made on 19 April 2021

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 12 May 2021

Appeal Ref: APP/A5840/C/20/3263593

The common parts of the Jam Factory development, 27 Green Walk, London SE1 4TQ

- 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 AHGR Limited against an enforcement notice issued by the Council of the London Borough of Southwark.
- The enforcement notice, numbered 20/EN/0331, was issued on 14 October 2020.
- The breach of planning control as alleged in the notice is:
The removal of a flower bed (shown in the approximate position hatched blue on the attached plan) by breaking open the wall of the flower bed and removing all plants and soil and organic material and the installation of wooden fencing on top of the southern wall of the former flower bed and the wall nearest to Block D of the Jam Factory development (the unauthorised works). The unauthorised works are contrary to the landscaping scheme approved by the council pursuant to application 09/AP/0700 (details of landscaping) as required by condition 4 of planning permission 06/AP/1116 because the flower bed as shown on the approved drawing no longer exists and the fencing is not an approved feature.
Condition 4 of planning permission 06/AP/116 provides: Detailed drawings of the landscaping within the site shall be submitted to and approved by the Local Planning Authority within 3 months from the date of this permission. Once approved, the works shall be completed within 3 months thereafter. The landscaping shall be maintained and retained in accordance with the approval given.
Reason: In order that the Local Planning Authority may be satisfied as to the details in the interest of the appearance of the building in accordance with policy 4.2.
- The requirements of the notice are:
 1. Remove the wooden fencing from the walls of what prior to the breach of condition had been a flower bed;
 2. Make good the damage to the northern wall of the flower bed filling in the gap made, render the wall and paint white and top with coping stone to match those existing on the low rise wall;
 3. Refill the flower bed with top soil and compost;
 4. Replant the flower bed with shrubs and small trees which meet the following criteria:
 - (a) The provision of at least three different varieties of shrub;
 - (b) The provision of at least 8 individual bushes per variety of shrub of which, subject to sub-paragraph (c) below, shall be approximately 1 metre in height above soil when planted;
 - (c) The nearest shrubs to Block D shall not exceed 0.5 metres in height above soil level when planted; and
 - (d) The provision of at least 8 non-coniferous trees within the flower bed along the back wall of the flower bed (the wall nearest to Block A) approximately 1.5 metre in height above soil level.
 5. Remove all other material not forming part of the stone paving, wooden decked area and bicycle racks of the original landscaped area, as well as other rubbish and

detritus caused by the requirements of the notice.

- The period for compliance with the requirements is 30 days.
 - 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 an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decision

1. It is directed that the enforcement notice be varied by:
 - Deleting '30 days' from the period for compliance and substituting with 'two months'.
2. Subject to this variation, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. Planning permission¹ was granted for a development of the site of The Jam Factory for flats and other uses, subject to a legal agreement and a number of conditions. Condition No.4 required details of landscaping to be submitted and approved, and the approved details to be completed, maintained and retained. Pursuant to the condition, details of landscaping for the common parts of the development were approved² and included two planters, one larger than the other, in an open space between Blocks A and D. There is no dispute between the parties that the landscaping was installed in accordance with the approved details.
4. In 2020, works were undertaken to the larger of the two planters, which included removing the plants, soil and part of the external wall of the planter, and a fence was installed on top of part of the retained wall. These works are the alleged breach of planning control which is the subject of the enforcement notice.
5. Since the enforcement notice was issued, the London Plan 2021 (LP) has been adopted and has superseded the policies of the London Plan 2016 referred to in the notice. I have been provided with copies of the relevant policies and the parties have been given the opportunity to comment on their implications for the case.

The ground (c) appeal

6. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control.
7. The appellant states that the works to remove the vegetation and stale soil were in preparation for new cultivation in order to refurbish and repair the landscaped area, install play equipment and change the planting. It is argued that the works should be considered in the context of this proposed scheme³, with a redesign of the planter to allow the installation of feature timber seating, and that the fence was installed in error and has already been removed. The

¹ Ref 09/AP/0700

² 06/AP/1116

³ As shown on Drawing numbers AS001 A Improvements to Amenity Space, Proposed Landscape Elevation 2.03, Proposed Sections 1 and 2 2.04 and Proposed Landscape Floor Plan 2.05 submitted with the appeal documents.

appellant's case is that if such a scheme were implemented it would result in the planters being retained and replanted, with a slight modification and a new planting scheme, and that there would therefore be no breach of planning control.

8. The original planters form part of the approved landscaping required by condition 4 of planning permission. The condition requires that once completed the landscaping shall be maintained and retained in accordance with the approval given. The works that have been carried out do not retain the approved landscaping and are therefore in conflict with the condition. On this basis, I am satisfied that the works that led to the serving of the enforcement notice were in breach of the condition and are a breach of planning control.
9. The alternative scheme put forward by the appellant, which also includes the installation of play equipment, new screen planting and alterations to the second existing large planter, has not been approved by the Council. Therefore, regardless of whether the works that have been carried out were intended to implement an alternative landscaping scheme, they are nonetheless a breach of planning control.
10. That the notice has now partially been complied with through the removal of the fence does not mean that the fence was not a breach of planning control at the time when the notice was served. It is not therefore appropriate to correct the notice to remove the reference to the fencing. The works that led to the notice being served are in breach of condition 4. They therefore constitute a breach of planning control and the appeal on ground (c) fails.

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

11. The ground of appeal is that planning permission should be granted for the matters alleged in the enforcement notice. The deemed planning application (DPA) relates to the breach of Condition 4 of permission reference 06/AP/1116, which briefly stated is to carry out the development without complying with Condition 4. As the matters relate to non-compliance with the requirement to retain the landscaping, the scope of the consideration of the merits of the DPA is restricted to whether the non-compliance is acceptable in planning terms.
12. The effect of allowing the ground (a) appeal would therefore be to grant planning permission for the residential development without complying with Condition 4. If I were minded to allow the ground (a) appeal, I could consider whether to impose a new condition on the permission granted through the DPA, and on the original planning permission. Neither party has suggested such a condition.
13. The appellant requests that their alternative proposal for changes to the garden/amenity area adjacent to Block D, as outlined in relation to the ground (c) appeal, should be considered under the ground (a) appeal.
14. In effect, the appellant is seeking to substitute the details approved pursuant to condition 4 with their alternative scheme. However, section 177(1)(a) of the 1990 Act states that planning permission can only be granted in respect of those matters stated in the enforcement notice as constituting a breach of planning control, whether in whole or any part. The alternative landscaping scheme in relation to the planter includes the provision of a timber seating area at one end of the planter, thereby reducing the size of the area available for

planting. In the context of the scale of the planter, this is a significant change, and includes works that are beyond the scope of the DPA.

15. Furthermore, the alternative scheme suggested by the appellant includes various additional elements including the installation of the play equipment, an additional planter to screen the play area, alterations to the second planter, relocation of a bike rack and additional timber seating. These go beyond the matters alleged in the notice, and do not form the whole or part of the matters. They are not minor modifications to the works that have been carried out, but are significant new elements that would result in a new form of development. It would be beyond the scope of the DPA to grant planning permission for the alternative scheme.
16. Consequently, I am not satisfied that the appellant's alternative scheme can be considered under s177(1)(a) of the Act to be a whole or part of the matters specified in the notice and cannot therefore be considered under the ground (a) appeal. I have therefore considered the ground (a) appeal on the basis of the works that have been carried out that led to the issuing of the enforcement notice.

Reasons

17. Having regard to the reasons for issuing the notice, the main issues are the effect of the development without complying with condition 4 of permission reference 06/AP/1116 on:
 - the character and appearance of the area, including the Bermondsey Street Conservation Area (CA); and
 - the living conditions of neighbouring occupiers with regard to noise.

Character and appearance

18. The CA has a varied character, with narrow streets in the vicinity of the appeal site, and a mix of historic and modern buildings. The converted Jam Factory development, which combines the original industrial building with modern extensions and additions, exemplifies the distinctive vibrant character of this part of the CA.
19. The appeal site is within an open hard surfaced area between two buildings in residential use as flats, one of which is a converted element of the former jam factory, the other is a new build. The two buildings are relatively close together and the open space is a communal area. It provides access to a number of the flats, and is semi-private, with access is restricted to residents and their visitors. The space forms a semi-enclosed courtyard which is overlooked by windows and balconies in close proximity over several storeys and is therefore an important part of the overall development.
20. The evidence indicate that the original planter was a sizeable structure that provided some important greenery between the two buildings. It broke up and softened the appearance of the open space, providing an attractive outlook from nearby habitable room windows and balconies. It formed part of a coherent landscaping scheme that had a mature and established appearance and made a positive contribution to the character and appearance of the CA, to the benefit of residents, visitors, and surrounding properties overlooking the site.

21. The works that have been carried out have resulted in the removal of the soil and planting, the partial removal of the wall of the planter, and the erection of a fence (now removed). The resulting partially demolished planter detracts from the character and appearance of the site and surrounding area, and makes a negative contribution to the CA.
22. I conclude that the development without complying with Condition 4 is harmful to the character and appearance of the area, including the CA and it thereby fails to preserve the character or appearance of the CA. It is thus in conflict with saved policies 3.12, 3.13, 3.15 and 3.16 of the Southwark Plan 2007 (SP), Strategic Policies 1 and 12 of the Core Strategy 2011 (CS) and LP policies GG1, D8, HC1, G5 insofar as they seek to ensure that development achieves a high quality of design that enhances local character, including the spaces that make up the public domain, and conserves the significance of heritage assets.

Living conditions

23. The planter is in close proximity to the two blocks of residential properties, which have windows and doors that look onto the space between the two buildings. The Council has raised concerns regarding the effect of the appellant's proposed alternative scheme on living conditions through the noise generated by those using the seating and play equipment. However, the Council has not raised any specific concerns in terms of the effect of noise from the works that have been carried out. I therefore conclude that the development without complying with condition 4 is not harmful to the living conditions of neighbouring occupiers with regard to noise. It is therefore not in conflict with SP Policy 3.2 and LP Policy D14 which seek, amongst other things, to ensure that development avoids adverse noise impacts on occupiers of the surrounding area.

Conclusion in relation to the ground (a) appeal

24. Although I have not found that the development is harmful to the living conditions of neighbouring occupiers with regard to noise, this does not override the harm that has been caused to the character and appearance of the area and the CA. The ground (a) appeal should not succeed and I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The ground (f) appeal

25. The ground of appeal is that the requirements of the notice go beyond what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity that has been caused by the breach.
26. The appellant argues that their proposed alternative works would be sufficient to remedy the breach. However, the alternative works require approval in their own right, and none has been granted. The alternative scheme does not therefore represent an obvious alternative to the requirements of the notice. The appeal on ground (f) fails.

The ground (g) appeal

27. The ground of appeal is that the period for compliance falls short of what should reasonably be allowed. The period for compliance is 30 days. The appellant requests a period of 4 months to allow sufficient time to instruct

appropriately skilled contractors, to order the planting and to implement their landscaping scheme, particularly due to the current pandemic restrictions.

28. The requirements of the notice are not to implement the appellant's alternative proposed landscape improvements but to carry out the works specified in the notice. The fence has already been removed. I consider that two months would strike a reasonable balance between bringing to an end the harm caused by the breach and the interests of the appellant. To this extent the appeal on ground (g) succeeds and I shall vary the notice accordingly.

N Thomas

INSPECTOR