



Appeal Decision

Site visit made on 7 July 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 20th August 2021

Appeal A Ref: APP/N5090/C/21/3266472 197 Hampden Way, London N14 7NG

- 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 Erhan Huseyin against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 2 December 2020
- The breach of planning control as alleged in the notice is Without planning permission, changes to ground levels and the construction of a hardstanding, retaining wall with railings above, steps and a platform area at the front of the property.
- The requirements of the notice are
 - Either
 - 1. Demolish the hardstanding, retaining wall, railings, steps, and platform area, and reinstate the ground levels to their condition before the development took place, shown in Image 01 (attached) and as 'EXISTING' on drawing No. 197HW/100 (attached) approved under planning permission reference 19/5222/HSE:
 - or
 - 2. Alter the development in accordance with 'PROPOSED' on drawing No.197HW/100 (attached) approved under planning permission reference 19/5222/HSE
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. The appeal is exempt for the prescribed fees and the appeal on ground (a) and the application for planning permission is therefore deemed to have been made under section 177(5) of the Act as amended.

Summary of Decision: The appeal succeeds to a limited extent and the enforcement notice is upheld as varied and corrected in the terms of the Decision set out below

Appeal B Ref: APP/N5090/W/20/3265684 197 Hampden Way, London N14 7NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as against a refusal of planning permission.
 - The appeal is made by Erhan Huseyin against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/4247/RCU dated 11 September 2020 was refused by notice dated 9 November 2020.
 - The application was for 'New hardstanding to provide off street parking and new vehicular access. Alterations to front landscaping and access'. (Retrospective application)
 - **Summary of Decision: The appeal is dismissed.**
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Decisions

Appeal A

1. It is directed that the enforcement notice be corrected and varied by
 - 1) deleting requirement 2 of the notice and replacing it with "alter the development to comply with the terms of the planning permission reference 19/5222/HE including the conditions subject to which that planning permission was granted."
 - 2) deleting *3 months* as the period for compliance and substituting it with *5 months* as the period for compliance.
2. Subject to this variation and correction, Appeal A is dismissed and 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.

Appeal B

3. Appeal B is dismissed.

Procedural Matters

4. The appeals consist of an enforcement appeal and a planning appeal relating to the front garden of the appeal site. Under ground (a) of the enforcement appeal, an application for planning permission is deemed to have been made (the DPA) and that application relates solely to the breach of planning control referred to in the notice i.e. what has been built.
5. The refused planning application is a combination of what has been built together with some changes as shown on plan reference 197HW200. There are therefore differences between the DPA under the enforcement appeal and the planning appeal which I will address as part of the decision.
6. As revisions to the National Planning Policy Framework were published on the 20 July 2021, the parties were asked to comment upon those revisions but chose not to do so. The Council subsequently confirmed that Policies 7.4 and 7.6 of the London Plan(2016) had been superseded as a result of the publication of the new London Plan. I have therefore not relied upon those policies in reaching my decision.

The Notice

7. I have wide powers to correct or vary a notice subject to any amendments not causing injustice to either party. The Council granted planning permission on the 20 November 2019 under planning reference 19/5222/HE (the approved scheme) for 'New front hardstanding to provide off-street parking with associated erection of retaining wall. New vehicular access.' However, the appellant instead chose to carry out different works which are described in the breach of planning control.
8. The requirements provide either for demolition of the existing works and re-instatement of the land to its condition before the breach took place or alternatively the appellant can carry out the works provided for in the approved scheme.

9. However, the wording of the alternative requirement is imprecise as it refers only to altering the development in accordance with the approved plan rather than the planning permission and its conditions. Condition 1 requires compliance with the approved plan 197HW100. I shall therefore delete the current wording of requirement 2 and replace it with "alter the development to comply with the terms of the planning permission reference 19/5222/HE including the conditions subject to which that planning permission was granted." The amendment does not cause injustice to either party but clarifies the alternative requirement.

Appeal A on ground (a) and the DPA

Main Issue

10. The main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

11. The DPA arising under the ground (a) appeal is for the works identified in the breach of planning control. The appeal site consists of a semi-detached dwelling within a stretch of road of similar dwellings that sit above front gardens that slope significantly down towards the road. The front gardens on this side of the road are largely characterised by central steps due to the slope with soft landscaping together with grassed areas either side of the steps. Prior to the development taking place, the front garden of the appeal dwelling was of a similar style.
12. The development includes a parking area for two cars at road level enclosed on three sides with a retaining wall of breeze blocks with metal railings on top. Steps are now to the side behind a side retaining wall of the car parking area. The Council puts the height of the rear wall of the parking area at around 1.8 metres. The frontage appears wider than surrounding gardens as the development extends across part of the shared pathway with No 199.
13. Although, there is no dispute between the parties that the approved scheme accepted the principle of a parking area to the front, off street car parking is more prevalent to the other side of the road where there is no significant slope and therefore no need for retaining walls. Where parking does exist on this side of the road, the parking area is part of the sloping frontage. The local context and distinctiveness of the area is therefore not of car parking at road level.
14. Whilst the appellant refers to the development creating visual interest at street level, the existing use of surface materials namely breeze blocks for the walls and slabs for the side steps and the loss of the natural slope do not result in a positive visual interest. The overall effect is of a sharp contrast between the higher area outside the dwelling, the parking enclosure and the side steps behind a side retaining wall. The absence of any landscaping emphasises the different elements. The Council describes the development as "a starkly jarring and unsympathetic development" and I share that view.
15. The planning approval does represent a fall-back position as acknowledged in the requirements. However, there are significant differences between the approved scheme and the existing development. The loss of the shorter length of central steps which previously broke up the visual impact of the rear retaining wall means that the rear retaining wall is now one unbroken solid

mass which adds to its prominence. The use of central steps and retaining the slope under the approved scheme created a blended scheme which was more in keeping with the established character of surrounding dwellings.

16. The appellant has referred to the possibility of imposing a condition to provide a facing and finish to the retaining wall feature with stained wood. However, adding stained wood to the development would not overcome the design issues created by having the parking area at road level, extending the development to the side with No 199, adding metal railings, and moving the steps to the side with No 195. The development does therefore harm the character and appearance of the surrounding area due to its size, design, height, and prominence.

Appeal B and the Section 78 planning appeal

Main Issue

17. The main issue is the effect of the proposal on the character and appearance of the surrounding area

Reasons

18. Plan reference 197HW/200 (the plan) was submitted with the refused planning application. The plan provides three comparisons of the front garden namely pre-existing front garden, approved front garden and existing front garden. However, "existing garden" is a combination of what exists with some changes. I have already found that the existing development does harm the character and appearance of the surrounding area under ground (a) of Appeal A. The changes shown on the plan to the existing development include more landscaping closest to the dwelling and excluding the metal railings. The side elevations as viewed from No 199 and 195 do not match on the plan but the appellant has not referred to any proposed changes to the car parking enclosure from what currently exists.
19. The appellant considers that what is now proposed is an improvement to the approved scheme and includes a reduction in the prominence of the step feature, an increase in the amount of soft landscaping and a reduction in the amount of hard surfacing. I have addressed the issue of the change to side steps in Appeal A and do consider that the use of side steps emphasises the dividing up of the garden into separate elements as opposed to the more blended effect of the approved scheme.
20. The side steps have also resulted in the extended width of the development as the car park area has extended at the other side as the appellant states that the dimensions of the car parking spaces are at its minimum to allow for car parking. Retaining the extended width of the development as part of the proposal across a shared path whether with soft landscaping and/or built development is not in keeping with the existing neighbouring gardens and emphasises the visual prominence of the development.
21. There is slightly more landscaping now proposed along the front of the dwelling as compared to the approved scheme. The landscaping is now shown as extending beyond the dwelling itself to be in line with the existing side retaining wall so that the proposed scheme would retain the existing width. The position of the increased landscaping which is to the rear of the development when viewed from the road also reduces the benefit of any increase in

landscaping given the prominence of the car parking enclosure which exists and would remain in its current form under the appeal proposal although the metal railings are not shown on the plan. I therefore consider that the proposal which largely retains the existing development with no significant changes does harm the character and appearance of the surrounding area.

22. I conclude on the main issue in Appeals A and B that the existing development does, and the existing development would, cause harm to the character and appearance of the surrounding area. In both appeals, there is therefore conflict with Policy CS5 of the Barnet Core Strategy (2012) which, amongst other things, development should respect local context and create places of high quality design. There is also conflict with Barnet's Residential Design Guidance (2016) and Policy DM01 of the Barnet's Local Plan (Development Management Policies) September 2012 Development Management Policies (2012) which collectively seek to reinforce and preserve local character.

Appeal A and ground (g)

23. An appeal under this ground relates to the period for compliance not being sufficient. The period for compliance is 3 months. The appellant has stated that he needs a period of 9 months to raise finance, to find a contractor to carry out the works and that the works will take longer than 3 months to complete. Whilst it is a matter for the appellant whether he wishes to demolish the development or implement the approved scheme, no details are provided as to why the works themselves would take longer than 3 months. The financing of any works is a matter for the appellant.
24. Nevertheless, it is the case that it may take longer than usual to find contractors to carry out work in view of backlogs of work that arose during the height of the Covid -19 pandemic. The appellant also needs to submit details of soft and hard landscaping in accordance with condition 3 of the approved scheme, should he choose to implement that scheme rather than demolish. I therefore consider that a period of compliance of 5 months is reasonable and a proportionate balance. The appeal under ground (g) therefore succeeds to that limited extent and I shall vary the notice accordingly.

Overall Conclusion

25. For the reasons given and having regard to all other matters raised, I conclude that Appeal A fails on ground (a) and I shall refuse planning permission on the deemed application and uphold the notice. Appeal A succeeds to the limited extent on ground (g) and I am varying and correcting the notice prior to upholding it. I also conclude that Appeal B is dismissed.

E Griffin

INSPECTOR