



Appeal Decision

Site Visit made on 3 November 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2021

Appeal Ref: APP/T5150/C/20/3257758

311A-C Preston Road, Harrow HA3 0QQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Tushar Shah against an enforcement notice issued by London Borough of Brent.
- The enforcement notice, numbered E/18/0797, was issued on 14 July 2020.
- The breach of planning control as alleged in the notice is the breach of Condition 3 of Planning Permission no. 18/2636 granted by the London Borough of Brent on the 9th October 2018 for the 'Conversion of single residential dwelling into 3 self contained units including conversion of garage into bike and refuse storage; and associated landscaping work and amenity space to the rear'.
- The condition in question is no 3 which states that: 'The soft landscape works and planting to the front garden shown on the approved plans shall be carried out prior to the occupation of any part of the development and retained thereafter. Any planting that is part of the approved scheme that within a period of five years after planting is removed, dies or becomes seriously damaged or diseased, shall be replaced in the next planting season and all planting shall be replaced with others of a similar size and species and in the same position, unless the Local Planning Authority first gives written consent to any variation.'
- The notice alleges that the condition has not been complied with in that: The detailed works have not been carried out prior to the occupation of the premises and the front garden area is not in line with the approved scheme.
- The requirements of the notice are to:
 - Step 1 All works should be carried out at the front garden of the premises in accordance with the proposed ground floor plan – 16005-PRESTONROAD – 311-502 REV.E of planning permission 18/2626, attached to this notice.
 - Step 2 Ensure that the soft landscaping works, installed as part of STEP 1, that within a period of five years after planting is removed, dies or becomes seriously damaged or diseased, shall be replaced in the next planting season and all planting shall be replaced with others of a similar size and species and in the same position, unless the Local Planning Authority first gives written consent to any variation.
- The period for compliance with the requirements is: 3 months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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 is varied by, at Schedule 4:
 - After STEP 1, the deletion of '*All works should be carried out at the front garden of the premises*' and the substitution of '*The soft landscape works and planting to the front garden shall be carried out in accordance with*' so that it reads '*The soft landscape works and planting to the front garden shall be carried out in accordance with the proposed ground floor*

plan – 16005-PRESTONROAD- 311-502 REV.E of planning permission 18/2636, attached to this notice.'

- The deletion of STEP 2.
2. Subject to the variations above, 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. The Council refers to policies of its emerging local plan within the enforcement notice. However, the local plan is not yet adopted and I cannot be sure that the policies referred to would not be subject to change. The London Borough of Brent Development Management Policies document (DMP), 2016 remains the development plan and it is on the basis of its adopted policies that I have based my decision.
4. Since the appeal was lodged, the Government published its revised National Planning Policy Framework (July 2021)('the Framework'). The parties have had the opportunity to comment on the implications of the changes during the appeal process.

Main Issues

5. The main issues of the appeal are the effect of the appeal scheme on:
 - The character and appearance of the area; and
 - The effect on flooding.

Reasons

Character and appearance

6. The appeal site comprises an attractive semi-detached Edwardian villa which is locally listed. The building is located in a prominent location along Preston Road, alongside a number of similarly designed properties which are also locally listed. The group of buildings is stated to have architectural, historic and townscape significance and authenticity. Planting to the frontages of residential properties along this part of Preston Road makes a significant contribution to the character and appearance of the area and helps mark the change in character between the generally commercial area and residential areas.
7. Photographs provided by the parties show the appeal site prior to the development, with the front garden mostly laid to lawn, a modest path leading to the front door, parking and some planting along the boundary with No 309. The site has been developed with paving which extends across much of the front garden and enables vehicles to park in front of the bay windows.
8. The parking of vehicles in front of the building dominates the frontage and detracts from the architectural interest of the building and the lack of planting diminishes the verdant character of the area. As a consequence, the appeal scheme harms character and appearance of the area and the setting of the locally listed building. Although paving would be allowed as part of the approved scheme it would be more limited in extent, with soft landscaping to soften its effect.

9. Policy DMP1 of the London Borough of Brent Development Management Policies document (DMP), 2016 seeks development which conserves or enhances the significance of heritage assets and their settings and retains landscape features or provides appropriate additions or enhancements. Policy DMP7 seeks to ensure that proposals affecting heritage assets sustain and enhance the significance of the heritage asset, its curtilage and setting.
10. Policy D3 of the London Plan (2021) seeks to ensure development responds to the existing character of a place and respects and enhances heritage assets. Policy HC1 of the London Plan states that proposals affecting heritage assets and their settings should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings.
11. The National Planning Policy Framework ('the Framework')(2021) defines heritage assets as a building identified as having a degree of significance meriting consideration in planning decisions because of its heritage interest. It includes assets identified by the local planning authority. The Framework states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application.
12. The appellant suggests that the previous landscaping design was poor quality, and that the appeal scheme is a more practical solution as a garden would need constant maintenance, that may not be carried out on a regular basis by future occupants of the property. However, the garden area would be modest in size and so I see no reason why it would not be maintained by future occupants, or by the owner of the premises. I therefore afford this matter very limited weight.
13. The appellant has drawn my attention to a number of properties in the area, including Nos 299, 301, 305 and 307 Preston Road, which are asserted to have a comparable amount of hardstanding to the front. I was able to see these properties during my site visit and saw that they all benefit from substantial planting between the parking areas and highway. They are not, therefore, comparable to the appeal scheme before me. Furthermore, I do not know the circumstances in which these front gardens were developed. I am therefore unable to give this matter weight in support of the appeal scheme.
14. The approved scheme makes provision for the parking of two vehicles. The appeal scheme allows a greater number of vehicles to be parked to the front, which in turn could reduce the pressure for on-street parking. However, the approved scheme makes provision for cycle stands and whether the site is within a PTAL rating of 2 or 3, I saw that it is conveniently located for local amenities, reducing the likelihood that occupants would be reliant on private vehicle. Any benefit derived from the provision of additional parking would therefore be limited and so I afford it limited weight in support of the appeal scheme.
15. Thus, the appeal scheme diminishes the verdant character of the area and harms the setting of the locally listed building, in conflict with policies DMP1 and DMP7 of the DMP, policies D3 and HC1 of the London Plan and the Framework, the requirements of which are set out above.

Flood risk

16. The front garden has been laid with block paving. The appellant asserts that permeable paving on a granular sub-base has been used to surface the site. However, no substantive details of the granular sub-base have been provided and as can be seen in the photographs taken by the Council, when it is wet puddles form within the site, which suggests that the paving is not permeable.
17. While the scheme approved by planning permission 18/2636 includes paving, the soft landscaping would allow water to drain into the ground, thereby reducing the amount of surface water run-off generated within the site.
18. Policy DMP1 seeks to ensure that development does not unacceptably increase exposure to flood risk, amongst other things, policy DMP9A seeks to ensure that development does not increase the risk of flooding elsewhere and DMP9B seeks to secure measures for the control and reduction of surface water. Policy D3 of the London Plan seeks to ensure development provides spaces and buildings that maximise opportunities for urban greening to create attractive resilient places that can also help the management of surface water.
19. Although the appeal site is located in Flood Zone 1, impermeable surfaces can increase the risk of surface water flooding. Under ground (f), the appellant suggests installing a drainage channel across the entrance to the site, to ensure surface water run-off is retained within the curtilage of the site. The drain would be located between the existing paving and the adjacent footpath. However, it is not clear where the water collected within the drain would flow to, or whether it would be discharged to a storm drain or soakaway. In the absence of such details, I cannot be sure that securing the installation of a drainage channel would satisfactorily address the increase to flood risk caused by the paving.
20. While I saw other properties in the area have been laid with hardstanding or paving, I do not know the circumstances under which these were installed or against which policies the proposals were assessed, if any. For the reasons given above, I am not persuaded that the paving would not increase flooding elsewhere. Thus, the appeal scheme conflicts with policies DMP1, DMP9A and DMP9B of the DMP and policy D3 of the London Plan.

Ground (a) Conclusion

21. The appeal scheme has resulted in harm to the character and appearance of the area and the setting of the locally listed building and would increase the risk of flooding elsewhere. Any benefits arising from the additional parking provided by the appeal scheme are outweighed by the harms identified.
22. Consequently, I conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

23. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be

- constituted by the matters stated in the notice, or... to remedy any injury to amenity which has been caused by any such breach.
24. Section 173 of the Act sets out that a notice may remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. It is clear from the wording of the notice that the purpose of the notice is to remedy the breach by making the development comply with the terms of planning permission 18/2636 dated 9 October 2018.
25. The appellant asserts that the steps required by the notice are excessive but has not explained why he considers them to be so. Under this ground of appeal, the appellant suggests installing a drainage channel, however, I have considered this matter under ground (a) above. The installation of the drainage channel would not remedy the breach.
26. Notwithstanding the appellant's case under ground (f), I have a duty to get the notice in order. The breach of condition is the breach of Condition 3 of planning permission, which relates to the soft landscaping works and planting to the front garden. However, Step 1 requires *all* works at the front garden of the premises to be carried out in accordance with the proposed floor plan 16005- PRESTONROAD – 311-502 REV.E of planning permission 18/2626.
27. Since the alleged breach is the breach of condition 3, the notice can do no more than require compliance with condition 3, which relates to soft landscaping. It is therefore necessary to amend the wording so that it is clear the requirement only relates to the soft landscape works and planting to the front garden, thereby ensuring that the requirement is not excessive. Since this is adding clarity to the notice and would not expand the requirements, I consider I can vary the notice without causing injustice.
28. Step 2 requires the landscaping works to be replaced within a period of 5 years after the planting is removed. While this forms part of condition 3, it is an on-going requirement which cannot be complied with within 3 months of the notice taking effect. Furthermore, the requirement is, in my view, unnecessary, as the Council could still take action in the event the appellant does not comply with the requirement to replace planting within a period of 5 years.
29. Since the breach is the appellant's failure to carry out the soft landscape works and planting to the front garden, I shall delete Step 2 and am satisfied that no injustice would be caused by this variation, since it narrows the scope of the requirements.

Ground (g)

30. An appeal under ground (g) is made on the basis that any period specified in the notice...falls short of what should reasonably be allowed. The appellant requests the compliance period is increased to 6 months to allow him time to raise the necessary funds to carry out the works and to find a competent building to complete the works to a high standard, which may take longer in light of the Covid-19 pandemic.
31. I see no reason why 3 months would not be sufficient to undertake the works. As pointed out by the Council, should the appellant have genuine difficulty in appointing a competent builder to carry out the works, the Council has powers to extend the compliance period under Section 173A(1)(b) of the Act.

32. Consequently the appeal under ground (g) fails.

Conclusion

33. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it and refuse to grant planning permission on the deemed application. The appeal on ground (f) succeeds to that extent.

M Savage

INSPECTOR