



Appeal Decisions

Site visit made on 12 October 2021

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2022

Appeal A Ref: APP/H5390/C/20/3255951

58 Ravenscourt Gardens, London, W6 0TU

- 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 Ben Parmar against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
 - The enforcement notice was issued on 21 May 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, alterations to front boundary treatment, retention of a vehicular crossover and the formation of a hardstanding in the front garden and installation of new planting.
 - The requirements of the notice are:
 - a. Remove the hardstanding on the front boundary and reinstate soft landscaping, as shown in the pre-existing drawing number, AP001A, of planning application ref 2019/03749/FUL, attached.
 - The period for compliance with the requirements is nine months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) 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.
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Appeal B Ref: APP/H5390/Y/20/3255952

58 Ravenscourt Gardens, London, W6 0TU

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Ben Parmar against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2019/03750/LBC, dated 17 December 2019, was refused by notice dated 14 May 2020.
 - The works are alterations to front boundary treatment and the retention of a vehicular crossover and the formation of a hardstanding in the front garden and installation of new planting.
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by:
 - Deleting '*alterations to front boundary treatment, retention of a vehicular crossover and*' from section 3.
 - Deleting '*and installation of new planting*' from section 3.

- Deleting from section 5, *'soft landscaping, as shown in the pre-existing drawing number, AP001A, of planning application ref 2019/03749/FUL, attached'* and substituting *'a front boundary hedge'*.
 - Deleting '(6)' and substituting '(9)' in section 6.
2. Subject to the corrections 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 Town and Country Planning Act 1990 as amended (the 1990 Act).

Appeal B

3. No action on the basis that listed building consent is not required.

Preliminary Matters - Appeals A and B

4. Further to a request for the questionnaire and supporting documents for Appeal B, it transpired that the Council had sent only one notification letter to interested parties. I therefore allowed an extension of time in order for additional notification letters to be sent to neighbouring residents. The parties were offered opportunity to comment on the representation received –both for Appeals A and B.

Appeal A

Preliminary Matters – The Enforcement Notice

5. As set out above, the breach of planning control as alleged in the notice is, *'Without planning permission alterations to front boundary treatment, retention of a vehicular crossover and the formation of a hardstanding in the front garden and installation of new planting.'*
6. However, 'retention' is not development within the meaning of s55 of the 1990 Act. Moreover, the site edged red has been drawn to exclude the crossover on the public footway. Perhaps for that reason, the notice does not require the crossover to be removed. The notice should therefore be corrected to delete *'retention of a vehicular crossover'*. I am able to do that without causing injustice to the appellant or the Council. The Council can still, as it could have done anyway, take separate enforcement action against the crossover subject to the time limits set out in s171(1) of the 1990 Act.
7. I also note the numerical error in section 6 of the notice which states that the steps *'must be completed within nine (6) months...'* I shall therefore correct the bracketed number to '(9)', so as to correspond with the number in word form. As nine months is clearly stated, I am able to do that without causing injustice to any party.

Appeal A on Ground (c)

8. A ground (c) appeal is that the matters alleged in the notice do not constitute a breach of planning control. The onus lies with the appellant to make his case on the balance of probabilities.
9. The alleged breach includes alterations to the front boundary treatment. However, the allegation does not clarify what those alterations are, and the Council does not explain why they constitute a breach of planning control. The

appellant's position is that the removal of the privet hedge, which formed the front boundary previously, did not require planning permission. The Council do not dispute that and has not sought to refute the appellant's explanation that no other boundary fencing or railings were removed.

10. In this case, taken as a whole, the notice is not hopelessly ambiguous and uncertain, so as to amount to a nullity. Nevertheless, I have no substantive evidence that, on the balance of probabilities, the alterations to the front boundary amount to development requiring planning permission. That aspect should therefore be removed from the notice.
11. The property is located within a Conservation Area, which is subject to an Article 4 Direction removing permitted development rights for the provision, within the curtilage of a dwelling house, of a hard surface for any purpose incidental to the enjoyment of the dwelling house. The alleged formation of a hardstanding is not therefore challenged by the appellant under ground (c).
12. The appellant asserts that no new planting has been installed, as alleged. Even if it has, new planting does not constitute development, as defined by s55(1) of the 1990 Act¹, thereby requiring planning permission. There is no breach of planning control in that regard.
13. Bringing the above together, I find, on the balance of probabilities, that the alterations of the front boundary treatment and installation of new planting, do not constitute a breach of planning control. Having regard also to the issues raised in the preliminary matters above, the alleged breach should be corrected and described as 'Without planning permission, the formation of a hardstanding in the front garden.'
14. The appeal on ground (c) succeeds to the extent described.

Appeal A on Ground (a) and the Deemed Planning Application

Main Issues

15. The main issues are:

- whether the alleged development preserves or enhances the character or appearance the Ravenscourt and Starch Green Conservation Area;
- the effect on the setting of the Grade II listed building; and
- the effect on surface water flooding.

Reasons

Designated Heritage Assets

16. The semi-detached dwelling at No 58 Ravenscourt Gardens, is a Grade II listed building located within the Ravenscourt and Starch Green Conservation Area (the Conservation Area). Its principal elevation, in combination with its adjoining neighbour (also listed), presents a stucco frontage incorporating full height decorative pilasters, recessed pilastered porches, ground floor French

¹ S55(1) of the 1990 Act provides that 'development' means the carrying out of building, engineering, mining, or other operations in, on, over or under land, or the making of any material change of use of any buildings or other land.

windows with architrave surrounds and sash window above, either side of a blind central panel.

17. The dwellings date from the early to mid-19th Century and form part of a group of listed buildings in this part of Ravenscourt Gardens², which are laid out in a clear, linear pattern with consistent setbacks from the road. Their significance is largely derived from their strong group value, uniform spacing, architectural detailing and distinctive colour and texture, which combine to create an elegant streetscape. The straight alignment of this section of road reinforces the strong architectural rhythm and pattern of the dwellings.
18. Front boundary treatments largely comprise a mixture of brick dwarf walls, rendered walling, railings and hedges, and various combinations of the same. The unifying factor is the greenery provided by the trees, hedges, lawns and planting in the front gardens which combine to create a verdant and attractive setting to the listed buildings and this part of the Conservation Area.
19. The Council acknowledge that the original railings across the front boundary have long been removed. The appellant has also provided a photograph³ which shows that the pre-existing frontage area was largely covered in paving. Nevertheless, it is evident from that photograph, that some planting has been removed, including what appears to be part of a tree in the right hand side of the image and a bush seen in the foreground. Moreover, the photograph does not show the pre-existing privet hedge that has also been removed, which would have screened part of the paving as well as providing a soft edge in keeping with the street scene.
20. I appreciate that the appellant has sought to utilise a high quality surfacing material, but, save for where the side boundary planting meets the back edge of the footpath, the appeal site frontage is now open and devoid of planting. Although I do not consider that in itself introduces visual clutter as suggested by the Council, I do find that it creates a stark setting to the listed dwelling that is out of keeping with the verdant character of the street scene. As a result, the car parked in front of the dwelling at the time of my site visit appeared exposed and unduly dominant, thereby detracting from the primacy of the principal street facing elevation of the listed building.
21. I accept frontage parking is a relatively common feature in this part of Ravenscourt Gardens. However, those that I saw, and those which are shown in the appellant's photographs, position the hardstanding to the front/side of the property. That has allowed in many cases a significant degree of the greenery to be retained in front of the dwelling. It also limits the degree to which parked cars obscure the principal elevation of the dwelling.
22. That contrasts with the hardstanding and parking at the appeal property which is fully focused directly in front of the dwelling. Consequently, as illustrated in photographs, even the appellant's small car obscures part of the French window, which is one of the main architectural features of the front elevation. Moreover, existing or future occupiers may choose to park a larger vehicle or even two vehicles in front of the dwelling with the associated additional harm. Although I accept that future occupants could reinstate soft landscaping, there

² Nos 27 and 29, 35 to 49 odd and 44 to 64 even, Ravenscourt Gardens.

³ Document 1

is no certainty to that in either timescale or likelihood. Such an argument therefore carries very little weight.

23. The combined effects of an open, hard surfaced frontage and the parking of a vehicle directly in front of the dwelling results in unacceptable harm to the character and appearance of the site and street scene. It follows that the alleged development fails to preserve the setting of the listed dwelling and to preserve or enhance the Conservation Area, the desirability of which is anticipated by sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Policies DC1 and DC8 of the Hammersmith Local Plan 2018 (LP) and Key Principles AH2 and CAG3 of the Planning Guidance Supplementary Planning Document - February 2018 (SPG).
24. The Council's reasons for issuing the enforcement notice also refer to conflict with LP Policy DC4 and SPG Key Principle AH1. The former primarily relates to alterations and extensions to existing buildings and therefore has limited relevance to the alleged development. The latter relates to information requirements for applications affecting heritage assets, for which I am unaware of any particular concern. I do not therefore find conflict with LP Policy DC4 or SPG Key Principle AH1.
25. In support of the appeal, the appellant has provided amended drawings⁴ showing additional frontage planting. It is submitted that such amendments could be secured by way of condition. Notwithstanding that the deemed planning application is made in respect of the development as alleged and built and that there is no mechanism for incorporating any revised plans into any deemed planning permission by way of condition, the above stated concerns would not be satisfactorily resolved. That is because the hardstanding and any car parked on it, as well as access to it, would still be directly focused in front of the principal elevation of the listed building, resulting in the harm I have described. Such harm would not be acceptably mitigated even if a net planting gain could be achieved by way of condition.
26. In this case I conclude that the alleged development leads to less than substantial harm to the setting of the listed building and the Conservation Area taken as a whole. In such circumstances the National Planning Policy Framework requires that any identified harm is weighed against any public benefits the development might secure. Even if the provision of off-street car parking could be considered a public benefit, that does not justify the harm caused by the alleged development or prevail over the great weight that should be given to the conservation of the heritage assets.

Surface Water Flooding

27. LP Policy CC4 requires that all proposals for new development must manage surface water run-off as close to its source as possible and on the surface where practicable, in line with the London Plan drainage hierarchy. The policy also states that all new outdoor car parking areas and other hard standing surfaces shall be designed to be rainwater permeable with no run-off being directed into the sewer system, unless there are practical reasons for not doing so.

⁴ Drawing numbers 2004.PLN.3000 and 2004.PLN.4000A

28. Whilst I note the appellant's submissions on the existing arrangement, it has not been shown that the hardstanding area, or even the junctions between the paving slabs, are designed to be rainwater permeable, or that run-off is directed towards the planted area to the side. I have also noted the literature provided on French drains but no details are provided as to how such a system would be applied at the appeal site.
29. Whilst a condition requiring agreement of surface water drainage could in principle be imposed, the supporting text to LP Policy CC4 states that all development schemes, including minor proposals, will be expected to show that they have managed surface water by utilising all available techniques to avoid increasing runoff and to reduce it as far as possible. That expectation has not been met.
30. I therefore find that it has not been shown, as required by LP Policy CC4, that the formation of the hardstanding does not cause an unacceptable increase in the risk of surface water flooding.

Other Matters and conclusion

31. I acknowledge that the Council found no harm to highway safety but that does not weigh in favour of the alleged development, or mitigate the harm I described above.
32. For the reasons given above, and having had regard to all other matters raised, I conclude that Appeal A should fail on ground (a) and the deemed planning application should be dismissed.

Appeal A on Ground (f)

33. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. On the basis of my above findings, the allegation should be corrected and described as: 'Without planning permission, the formation of a hardstanding in the front garden.'
34. The requirement of the notice is '*Remove the hardstanding on the front boundary and reinstate soft landscaping, as shown in the pre-existing drawing number, AP001A, of planning application ref 2019/03749/FUL, attached.*' The purpose of the enforcement notice is therefore to remedy the breach of planning control. In this situation, the only appeal that can be considered on ground (f) is whether the requirement is excessive to remedy the breach.
35. The appellant considers it excessive to require that the site be put back to its pre-existing state and that conditions requiring replacement planting and the introduction of a French drain, are sufficient to address the alleged breach. However, I have considered the same under ground (a) and have come to the opposite conclusion.
36. As noted, the requirement is to reinstate soft landscaping as shown on aforementioned drawing number. Although that is referenced as attached, the drawing is not included in any of the copies of the enforcement notice provided. I shall therefore delete reference to the plan and rely on the principle that the appellant is best placed to know the pre-existing soft landscaping to the front boundary; indeed, he acknowledges in his evidence that there was a hedge.

37. Nevertheless, I do not find the requirements of the notice to be excessive and the appeal on ground (f) fails.

Appeal A Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

Preliminary Matters

39. The appeal form confirms that the description of the works changed from that stated on the application form to '*alterations to front boundary treatment and the retention of a vehicular crossover and the formation of a hardstanding in the front garden and installation of new planting.*' The above banner heading reflects that change.

Reasons

40. As explained above, No 58 Ravenscourt Gardens is a Grade II listed building. Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that, subject to provisions, '*no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised.*' That authorisation is listed building consent.
41. The alterations to the front boundary, formation of a hardstanding in the front garden and installation of new planting do not involve the demolition of the listed building, or its alteration or extension in a manner which affects its character as a building of special architectural or historic interest. The works do not therefore require listed building consent. I would reach the same conclusion for the vehicular crossover but that doesn't even fall within the red line boundary of the appeal site.
42. Consequently, the merits of the appeal do not fall to be considered.

Appeal B Conclusion

43. No action for the reasons set out above.

Richard S Jones

INSPECTOR