



Appeal Decision

Site visit made on 15 March 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 06 May 2022

Appeal Ref: APP/T5150/C/21/3267393

32 Barn Hill, WEMBLEY, HA9 9LD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Stedman against an enforcement notice issued by London Borough of Brent.
 - The notice, numbered E/20/0395, was issued on 15 December 2020.
 - The breach of planning control as alleged in the notice is the erection of a front boundary, front porch and the formation of a hardstanding to the premises.
 - The requirements of the notice are: Step 1 Demolish the front brick wall, erect a 300mm high castellated dark yellow.grey stock brick wall to match the front boundary wall as erected as Number 34 Barn Hill. Plant a privet hedge behind the brick wall. Remove hardstanding to the front of the premises and replace with soil, shrubs and grass so the front garden area matched number 34 Barn Hill, Step 2 .Remove the front porch and restore the front of the property to the condition before the front porch was installed.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (e), 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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Decision

1. It is directed that the enforcement notice is varied by: the deletion of Step 1 and substitution with "Remove the brick wall and restore the front wall to its previous condition."
2. Subject to the variation, the appeal is allowed insofar as it relates to the hardstanding and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the hardstanding and subject to the following condition:

The soft landscaping at the front of the house shall be retained and maintained hereafter.
3. The appeal is dismissed and the enforcement notice is upheld as varied insofar as it relates to the wall and porch and planning permission is refused in respect of the wall and porch at 32 Barn Hill on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

4. The front porch referred to in the notice was removed after the notice was issued, in accordance with Step 2 of the requirements.

Ground (e)

5. An appeal on this ground is on the basis that copies of the notice were not served as required by section 172(2) of the 1990. The appellant's case is that the notice was not properly served on him and his wife as the owners of the property because copies were sent to an old address, and the copy that was sent to the appeal property was not addressed to them by name (but rather to the Occupier). In addition, the appellant argues that the notice referred to matters which had not been previously raised with them by the Council such as the porch.
6. Section 329 of the 1990 Act provides that any notice may be served by delivering it to the person on whom it is to be served or by leaving it at the usual or last known place of abode of that person. I am therefore satisfied that the notices were properly served in accordance with the relevant provisions, as the notices were delivered to the appellant's home and he received a copy, notwithstanding that they were not addressed to him personally but to the Occupier. In any event, there is no evidence to suggest that the appellant or any other person has been substantially prejudiced by the failure to serve him with a copy of the notice. The appeal was made by the appellant within time and is now being determined¹.
7. The 1990 Act does not require the Council to discuss the matters alleged to be a breach of planning control with the owner prior to the issue and service of an enforcement notice. Whilst it may be good practice to do so, any such failure will not result in the notice not being properly served.
8. For the reasons set out above, I do not need to consider this ground any further and it fails.

Ground (c)

9. To succeed on this ground the appellant needs to prove that the matters stated in the notice do not constitute a breach of planning control.
10. The appellant argues that a porch was an original feature of the house and that it will have been taken down and reinstalled many times over the life of the building. He also argues that the porch was removed for a short period of time to allow the hardstanding to be laid; that the new wall was no higher than the height of the finial on the wall it replaced; and that the hardstanding was a replacement of the original hardstanding in similar materials.
11. The appellant provided two photographs of the porch which appear to be dated May 2018 and May 2020, but these do not show that the porch was in existence at any point prior to May 2018. The Council has provided photographs from Google which are labelled June 2008, September 2012, August 2014, June 2015, December 2015, March 2018 and March 2019, all which show the house without the porch. A Google Maps photograph labelled December 2020 shows the porch but this is again not present in the photograph dated July 2021. The Council accepts that the porch was removed following the issue of the notice.

¹ Section 176(5) of the 1990 Act provides that where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

12. I have taken into account of the Everest quote including for a porch dated 21 August 2008 but this is not proof that the works were done at that time, and the photographic evidence shows that the porch was a fairly recent addition, although the exact date is not clear. The ground (c) appeal cannot therefore succeed in relation to the porch as it is development and there is no evidence that it was constructed more than 4 years prior to the issue of the notice.
13. The appellant's photograph dated May 2020 shows the original wall including gate and finial, and as he has reused the gates it is therefore possible to easily compare the heights of the two walls. The new wall is higher overall, and the piers are substantially higher than the previous wall, and the materials used look very different (including in colour). The wall and other building operations materially affect the external appearance of the building and are development pursuant to section 55 of the 1990 Act. The development does not benefit from permitted development rights or an express permission (although this has not been argued by the appellant in any event). The hardstanding has also been replaced, is development and is not authorised by any permission. The ground (c) appeal cannot therefore succeed in relation to the wall and hardstanding.
14. For the reasons set out above, the appeal on this ground is dismissed.

Ground (a) and the deemed application for permission

15. The main issues are the effect of the development on the character and appearance of the host building and the Barn Hill Conservation Area.
16. The appeal property is a detached bungalow located in a residential area with a mix of houses and bungalows in the immediate vicinity, mostly with front garden areas and fairly low front boundary features. It is within the Barn Hill Conservation Area, a designated heritage asset, whose significance in part arises from the architectural quality of the generally mock-Tudor styled houses, of which the host property is an example.
17. The appellant's case is that the development is attractive and fits in with its surroundings and other front boundary features in the area, and that the wall that it replaced was dangerous and not an original feature in any event. The deemed application for permission is for the development as described in the notice (and as it existed at the time that the notice was issued). However, the appellant has indicated that he would also like an alternative scheme to be considered with the wall painted red and the planting behind the wall and two shrubs within the hardstanding (as already installed) maintained.
18. The Council argues that the unsympathetic nature of the development significantly harms the character and appearance of the host building and visual amenity of the conservation area.
19. The development as built included no soft landscaping. The wall and hardstanding are constructed from mostly yellow coloured materials, which are incongruous in this location. The host property, and most of the other buildings in the vicinity, are predominantly constructed of red brick, dark tiles and wood, and white render. There is also a lot of soft landscaping along the street including trees and planting in front gardens. The bright yellow coloured materials in the development are therefore extremely noticeable as they stand out against the overall colour pallet and predominant existing materials in the

area. The scale and mass of the wall is also greater than most of the front boundary treatments in the immediate vicinity which contributes to its inappropriate prominence.

20. The appellant provided photographs of many other front boundary walls and gates. I accept that there is a wide variety of boundary designs, this in part arises from the fact that there is a mix of house and bungalow types and sizes in the area which has a fairly steep slope, and many of the individual plots themselves are not on one level. However, the front walls in the immediate vicinity of the appeal property are generally low and unobtrusive in appearance, and the development stands out in that location due to its size and height, and causes material harm to the character and appearance of the host building and area, and significance of the conservation area.
21. Painting the wall red would not sufficiently reduce this harm, notwithstanding that the host property has some brickwork painted red, as does the front wall of No. 36. Due to the size of the wall it would still be overly prominent even if painted which would be an inferior finish, and there would be ongoing maintenance issues caused by the yellow bricks underneath which is not a consideration on the main house. The Barn Hill Conservation Area Design Guide advises that walls should be built to match the street scene, including matching materials and of no more than 1m in height. The wall as built, and even if painted red, would not fit within this guidance.
22. The hardstanding replaced the existing paving and is less incongruous and prominent than the wall. I have taken account of the planting that has taken place since the issue of the notice, and the original paving that it replaced, although it was of a very different colour. Overall, the hardstanding will not cause harm to the host property and area if the soft landscaping is properly maintained and I will therefore grant permission for this part of the development with a condition to secure this. I am satisfied that a condition to retain and maintain the soft landscaping meets the statutory and legal tests and the planting improves the appearance of the development and is more in keeping with the character and appearance of the area.
23. Whilst the porch has been removed, it is part of the matters stated in the notice to constitute the breach of planning control and therefore part of the deemed application for permission. The design of the porch is materially different in character to the rest of the building, and encloses the original windows and door. I have taken account of the decision of the previous inspector who dealt with the earlier proposed porch². This similar porch, as constructed then removed on the service of the notice, which encloses the recessed entrance unbalances the frontage of the building and therefore causes harm to the host building and character and appearance of the conservation area. There was also no evidence that the previous porch at No.34 was part of that original building, and it was not possible to ascertain this from the photographs submitted.
24. The appeal property is within the designated heritage asset of Barn Hill Conservation Area and the harm caused to its significance by the porch and wall is less than substantial in the terms set out in the National Planning Policy Framework. It is therefore necessary to consider any public benefits arising from the development which includes the rebuilding of a more stable wall

² APP/T5150/A/09/2097052

adjacent to the public highway but this is insufficient to outweigh the harm as identified above.

Other matters

25. I have also taken into account the appellant's representation that the works were undertaken to ensure that a family member would not suffer from a deficient paving and surface. However, no specific details were provided regarding the way in which the development would provide these benefits, as opposed to any new wall and hardstanding more in keeping with the character and appearance of the area, and so it does not outweigh the harm that I have identified above.

Conclusion on ground (a)

26. The porch and wall cause material harm to the character and appearance of the host building and the area. These elements of the development are in conflict with policies DMP1, BD1 and BHC1 of the Brent Local Plan 2022, which, amongst other things, aim to allow development that complements the locality, is of good design and enhances the significance of heritage assets. In the absence of any other material considerations of sufficient weight to overcome this conflict, the appeal fails in part and permission is not granted for the wall and porch, although it is granted for the retention of the hardstanding with a condition requiring the retention and maintenance of the soft landscaping.
27. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the hardstanding, but otherwise I will uphold the notice and refuse to grant planning permission in respect of the other parts of the matters. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the 1990 Act.

Ground (f)

28. An appeal on this ground is on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
29. The purpose of the notice is to remedy the breach of planning control. Step 1 therefore exceeds what is necessary to remedy the breach as it requires works to be done which would not restore the land to its previous condition, but would provide an entirely different boundary treatment. Step 1 should therefore be varied to require that the land be restored to its condition before the breach took place.
30. The alternative scheme suggested by the appellant has been dealt with above in relation to the ground (a) appeal.
31. 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. The appeal on ground (f) succeeds to that extent.

Zoë Frank

INSPECTOR