



Appeal Decision

Site visit made on 15 March 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Appeal Ref: APP/T5150/C/21/3273052

351 Stag Lane, London NW9 9AD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Cuen Wei Zhang against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 11 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a front wall, gate, pillars and hard surface at the front of the premises AND without planning permission, the erection of an outbuilding built on land forward of the front wall of the dwelling ("the unauthorised development").
 - The requirements of the notice are to:
 - STEP 1 Demolish the unauthorised front boundary wall, gate and pillars to the premises.
 - STEP 2 Demolish the unauthorised outbuilding as shown hatched in YELLOW on the attached Plan B of this notice.
 - STEP 3 Remove the unauthorised hardstanding to the front of the premises, lay soil and turf over the area as shown hatched in RED on the attached Plan B of this notice.
 - STE 4 Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises, and reinstate the land back to its original condition before the unauthorised works took place.
 - The period for compliance with the requirements is: 6 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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Decision

1. It is directed that the enforcement notice is varied by:
 - At Schedule 4, STEP 3, delete the words ', lay soil and turf over the area as shown hatched in RED on the attached Plan B of this notice', so that it reads 'Remove the unauthorised hardstanding to the front of the premises.'
2. Subject to the variation above, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The Council adopted the Brent Local Plan 2019-41 (BLP) on 24 February 2022. The Council advise that policy DMP1 is very similar to the 2016 policy DMP1 and that the remaining policies quoted in the enforcement notice have been replaced with policies BT4, BSUI4, BHC1 and BD1. The appellant has been

given the opportunity to comment on the implications of the adoption of the new local plan through the appeal.

4. Although the appellant appealed under grounds (a) and (c), some of the matters raised in the appellant's statement of case concern matters which should be considered under this ground (f). I have raised this with the parties and have given the Council the opportunity to comment on these matters through the appeal. I shall consider an appeal under ground (f) accordingly.

Ground (c)

5. An appeal under ground (c) is made on the basis that those matters (the matters stated in the notice, if they occurred) do not constitute a breach of planning control. It is for the appellant to make their case on the balance of probabilities. As set out in Planning Practice Guidance (PPG), the appellant's evidence should not be rejected simply because it is not corroborated. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
6. The appellant's case under ground (c) concerns the paving, which the appellant asserts is permitted development under Class F, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO). Class F permits the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or the replacement in whole or in part of such a surface.
7. Development is permitted subject to the condition that where (a) the hard surface would be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway; and (b) the area of ground covered by the hard surface, or the area of hard surface replaced, would exceed 5 square metres, either the hard surface is made of porous materials, or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.
8. The surface is stated to be made up of small paving bricks atop a gravel sub-base on top of the soil, with open voids between the blocks to allow rainwater to penetrate. While I saw that paving bricks have been installed, the appellant has provided no evidence to show that they have been installed above a gravel sub-base.
9. Photographs provided by the Council, dated 17 April 2019, show the site after the front section of paving bricks, between the highway and the gates had been laid. The remainder of the site appears to be laid with concrete between the thatched outbuilding and the entrance to the site and some sort of compacted hardcore with fine material. Although such material has conventionally been used as a sub-base, the fine material tends to stop water passing through it easily.
10. Although it is possible that the concrete and compacted hardcore was removed prior to the placing of the sub-base, I consider it far more likely that it has been retained in situ, particularly since the bricks which were subsequently laid appear in the photograph, to have been stored on top of the hardcore ready to

be laid. I saw no obvious means of directing surface run-off water to a permeable or porous area during my visit.

11. Thus, for the reasons given above, the appellant has failed to demonstrate, on the balance of probabilities, that the hard surface is made of porous materials or that provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse. Consequently, it is not permitted development and the appeal under ground (c) must fail.

Ground (a)

Main Issues

12. The main issues of the appeal are, the effect of the appeal scheme on:

- The character and appearance of the area; and
- Surface water flooding; and
- The safety of drivers and pedestrians.

Reasons

Character and appearance

13. The appeal site comprises one of a group 4 thatched cottages, designed by Ernest Trobridge, which have been locally listed because of their historical significance, authenticity and townscape significance. The grouping is identified as among the best of Trobridge's creations to survive.
14. The main dwelling is set back from the road and is constructed in timber frame with elm boarding, extensive leaded lights with wooden mullions, brick chimney stacks and a thatched roof. Although Stag Lane comprises a diverse range of building styles and types, the cottage is distinctive and highly attractive and makes a positive contribution to the character and appearance of the area.
15. Although there are a mix building style and designs in the area, boundary treatments of residential properties are generally constructed using traditional materials, such as vegetation, timber and brick and are generally low level. Where taller boundary treatments are used, they generally comprise metal railings, retaining a sense of openness.
16. The front boundary wall has been constructed in red brick, with timber slatted fencing above. Substantial concrete pillars and low level concrete walls have been erected, which present an enclosed frontage. The use of concrete is uncharacteristic of the area and contrasts significantly with the use of traditional materials used in construction of the main dwelling. The gates are substantial structures, with grey vertical panels and black surround, which also contrasts with the more traditional materials used elsewhere in the appeal site and surrounding area.
17. Given their proximity to the highway, the pillars and gates dominate the frontage and significantly diminish views of the appeal building. Although some planting to the frontage has been retained, which limits distant views of the gates when travelling south, towards the junction with Hay Lane, Roe Green

and Boaks Close, due to the position of the planting, it does not screen views when travelling north, towards the junction with Goldsmith Lane.

18. The appellant suggests that, if required to remove the taller gates, they would replace it with a 1m high equivalent under permitted development rights. While a 1m gate of similar design would be similarly out of keeping with the character of the area and the main dwelling, it would be far less obtrusive than the gates which have been installed. Consequently, I give this matter very limited weight.
19. Although views of the brick boundary wall are limited from the public domain by vegetation, parts of it can be clearly seen from the public domain, particularly the section by the bin storage area. Given its height and the bright colour of the brick, it appears an incongruous feature against the traditional style of the main building.
20. While the structures help to improve privacy and security for occupants within the site, alternatives, such as the use of CCTV, alarms and the planting of vegetation would be an alternative way of helping to improve privacy and security for the occupants. I therefore afford such benefits very limited weight.
21. For the reasons given above, I find the front wall, gates and pillars diminish the character and appearance of the area and the setting of the locally listed building, contrary to policy DMP1 of the BLP, which supports development where it conserves or where possible enhances the significance of heritage assets and their settings, policy BHC1, which seeks to ensure proposals sustain or enhance the significance of the heritage asset, its curtilage and setting and contribute to local distinctiveness through the use of appropriate materials, amongst other things and policy BD1, which seeks to ensure development respects and complements historic character.
22. The paving slabs which have been laid are a bright red colour with pink hues and black edging, which contrasts significantly with the muted colours of the adjacent street paving. This is harmful to the character and appearance of the area and the setting of the locally listed building, contrary to policies DMP1 and BHC1, the requirements of which are set out above.
23. Although the entrance to the site was previously paved, it was finished in a grey colour, more in keeping with the surrounding area. I acknowledge that the frontage of the neighbouring properties have been laid with a red brick, with pink hues, however, I do not have full details of the circumstances around its installation. Furthermore, the neighbouring site has not utilised the contrasting black edging, which contributes to the incongruity of the appeal scheme.
24. The outbuilding sits between the main dwelling and a pre-existing outbuilding, both of which are clad in timber with thatched roofs. The building has been finished in what appears to be a black, composite material, with a pitched roof to one section and a flat roof section to the other. The material has a sheen, which reflects the light, in contrast to the timber used in construction of the main dwelling.
25. Although the outbuilding is located further back within the site than the pre-existing outbuilding, both the pitched roof section and the flat roof section can be seen from the public domain. The design and finish of the outbuilding contrasts with the traditional materials used in construction of the main

dwelling and pre-existing outbuilding and draws the eye, with its incongruous roof forms and fails to sustain or enhance the significance of the heritage, contrary to policies DMP1, BHC1 and BD1, the requirements of which are set out above. Given its substantial size and position within the site, it also fails to accord with the Residential Extensions & Alterations SPD 2 (SPD)(2018), which sets out if the garden is more than 100m² then normally no more than 30m² may be acceptable, and it should generally be located within the final fifth of the garden.

26. The appellant accepts that the outbuilding is not permitted development but suggests the only breach is a small linking element connecting the outbuilding to the existing garage, and the combined structure therefore projects forward of the front wall of the house.
27. Part 1, Class E of Schedule 2 of the GPDO permits the provision within the curtilage of the dwellinghouse of '(a) any building...required for a purpose incidental to the enjoyment of the dwellinghouse...', subject to limitations at E.1(c) any part of the building... would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse and (e) the height of the building, enclosure or container would exceed- (i) 4 metres in the case of a building with a dual pitched roof, (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or (iii) 3 metres in any other case.
28. The structure exceeds the height limitations and, by the appellant's own admission, the purpose of erecting the outbuilding is to expand their living accommodation, as they did not want to alter the locally listed building itself. Living accommodation would not be incidental to the enjoyment of the dwellinghouse and so would not be permitted by the GPDO.
29. The appellant states that in the event the notice is upheld, they will rebuild something very similar under permitted development rights. However, the flat roofed section of the outbuilding is visible from the public domain and contributes to the harm to the character and appearance of the area, which limits the weight any such fallback shall be given. Furthermore, since the appellant is seeking to provide additional living accommodation, which would not be permitted by the GPDO, I consider it is unlikely that the appellant would choose to rebuild an outbuilding for incidental purposes, particularly given that there is already an outbuilding within the site. I therefore afford this very limited weight.
30. The appellant suggests, as an alternative to the outbuilding, they could construct a side extension to a width of 50% of the main house, to the cottage without requiring consent, which would cause greater harm to the no-designated heritage asset. However, the appellant has not shown what such an extension would comprise and so I cannot be sure it would have a greater impact than the outbuilding which has been constructed. I therefore afford this matter very limited weight.
31. The National Planning Policy Framework ('the Framework')(2021) states heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. It goes on to advise that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the

application. A balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

32. While the other cottages within the grouping may have been extended, I do not have any substantive details of those extensions. It appears, from an aerial photograph, that the properties have been extended to the rear, away from the public domain. Consequently, they are not comparable to the appeal scheme and so I give this matter very limited weight.
33. Thus, for the reasons given above, I find that the wall, gates and pillars, the outbuilding and the paving harms the character and appearance of the area and, although it does not affect the fabric of the locally listed building, diminishes its setting, contrary to policies DMP1, BHC1 and BD1 of the BLP and the SPD, the requirements of which are set out above.

Surface water flooding

34. Policy DMP1 supports development where it does not unacceptably increase exposure to flood risk and policy BSUI4 states that proposals that fail to make adequate provision for the control and reduction of surface water run-off will be refused. As set out above, I have found, on the balance of probabilities, that the paving which has been laid hard is not made of porous materials.
35. The SPD advises that water run-off from hardstanding should be minimised through containment within the property, feeding into soft landscaping areas and/or soakaways. However, provision has not been made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse. Indeed, the paving to the front of the gates slopes down towards the main road, meaning that any surface run-off would be directed towards the highway, increasing the risk of flooding off-site, contrary to policies DMP1 and BSUI4 and the SPD, the requirements of which are set out above.

Highway and pedestrian safety

36. I saw that Stag Lane is a well used road, with a number of uses which are likely to generate both vehicle and pedestrian movements. While the setback of the gates and pillars ensures users of the access have sufficient visibility to see pedestrians using the pavement, vehicular users of the entrance are likely to have to straddle part of the footpath, while the gates are opened. This would cause an obstruction which disabled users are likely to find particularly difficult to navigate and would harm pedestrian safety, contrary to policy DMP1, which seeks to ensure development is satisfactory in terms of means of access for all and does not have an adverse impact on the movement network.
37. Policy BT4 concerns the formation of an access onto a road or where development will result in the increased use of existing access points. While the works have not resulted in the creation of an access, I consider it highly likely that the creation of the hardstanding has increased the number of vehicles which can be parked within the site and therefore increased the use of an existing access point. The policy seeks to ensure that the increased use of existing safe access points will not harm the road's strategic traffic distribution role. Although the right hand visibility splay is limited, it is vegetation which limits it, rather than the structures which have been erected. I therefore

consider there would be no increase in harm to highway safety arising from the appeal scheme and no conflict with policy BT4 in this regard.

Other Matters

38. I acknowledge that an interested party has written in support of the appeal scheme. However, for the reasons given above, I have found, despite the sturdy construction of the works, it is contrary to policy.

Ground (a) conclusion

39. For the reasons given above, I conclude that the appeal scheme conflicts with the development as a whole. There are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

40. 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 those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The notice confirms that the purpose is to remedy the breach of planning control.
41. Section 173(4) of the Act sets out the purposes of an enforcement notice are (a) remedying 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, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
42. The appellant states that the requirement to replace all of the paving with soil and turf is unreasonable and has provided photographs of the site prior to the development, which shows part of the frontage was paved. While the photographs provided by the appellant do not show the previous driveway within the premises in detail, it is evident that the driveway was not previously turfed in its entirety. Requiring it to be turfed therefore exceeds what is necessary to remedy the breach.
43. I shall delete the words ‘, lay soil and turf over the area as shown hatched in RED on the attached Plan B of this notice’ from STEP 3. Given the requirement in STEP 4 to reinstate the land back to its original condition before the unauthorised works took place, this would ensure the land is restored to its condition before the breach took place, in line with section 173(4)(a) and so I consider this can be done without causing injustice to either party.
44. The appellant suggests, with respect to the outbuilding, the appellant could remove the part of the outbuilding that links it to the garage. However, I have no proposed scheme before me. As set out above, I consider it unlikely that the outbuilding would be used for incidental purposes and would therefore not be permitted by the GPDO. Furthermore, it is not possible to vary the enforcement notice to require that the development is modified with sufficient precision that the appellant knows what they have to do. Since the requirement is to demolish the outbuilding, it is not open to me to substitute lesser steps which would leave unauthorised structure in place.

Conclusion

45. 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.

M Savage

INSPECTOR