



Appeal Decision

Site visit made on 9 May 2022

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 07 June 2022

Appeal Ref: APP/N5090/C/21/3268546

Land at 72 North End Road, London NW11 7SY

- 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 Goldberg Properties (London) Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 8 February 2021.
- The breach of planning control as alleged in the notice is Without Planning Permission, the formation of a hardstanding to the front of the property.
- The requirements of the notice are: 1) Remove the hardstanding and restore the land back to the state it was in prior to the breach occurring (as shown in the attached 3rd photograph), the works to include the reinstatement of the dwarf wall, small garden and concrete hardstanding; and 2) Permanently remove from the property all constituent materials resulting from the works in 1. above.
- 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) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (c)

1. The appeal on this ground is that the matters alleged do not constitute a breach of planning control. The appellant's case on this ground is that demolition of the dwarf garden wall, reinstatement of which is required by the notice, represented permitted development¹ (PD) and so was not a breach of planning control.
2. However, the appeal on this ground is that the matters *alleged* do not represent a breach of planning control. The matters alleged are the formation of a hardstanding. There would appear to be no dispute that those matters represent a breach, and so the appeal on ground (c) must fail.

The appeal on ground (a) and the deemed planning application (DPA)

Main Issue

3. The main issue is the impact on highway safety in the vicinity of the appeal site.

¹ Pursuant to Part 11, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO)

Reasons

4. The appeal property sits behind a pedestrian crossing on the A502 road. Accordingly, cars parking on the newly installed hardstanding traverse the path of this crossing in order to park. Since there does not appear to be sufficient space for vehicles to both enter and leave the appeal site in a forward direction, vehicles would either need to reverse onto or off the highway. This causes a significant risk of conflict between vehicles parking at the appeal site and pedestrians using the crossing, resulting in highway safety harm.
5. The appellant claims that 'the amount of hardstanding provided without planning permission' is not 'so significant that it allows for a car to use the front forecourt area'. However, I saw from my site visit that the amount of hardstanding has enabled a car to park off the road.
6. It is also submitted that removal of hardstanding to 'replicate the previous lawful position' would not 'either stop or deter a motor vehicle accessing the site'. The Council has adduced photographic evidence seeking to demonstrate that in its previous lawful position, the front of the property had some soft landscaping, with a dwarf wall to the front. In my view, removal of the dwarf wall was necessary to facilitate the formation of the hardstanding.
7. As such, on the evidence before me, demolition of the wall and formation of the hardstanding were carried out as a single operation. In its previous lawful state then, a vehicle would not have been able to park in the front garden.
8. I am mindful of the appellant's submissions that demolition of the dwarf wall represents PD. However, in the absence of evidence of any significant parking pressure in the immediate area, I find as a matter of fact and degree it to be more likely that a driver would use an on street parking space, rather than park over soft landscaping at the appeal site, bearing in mind practical difficulties related to a vehicle's wheels churning the soil.
9. I note that the Council's Highway's team does not wish to have bollards installed to prevent parking in the appeal property front garden, but this does not alter my assessment above. I therefore conclude on the main issue that the appeal development has a harmful effect in terms of highway safety in the vicinity of the appeal site. It would conflict with Policy DM17 of the Council's Development Management Policies (2012), which requires the safety of all road users to be taken into account in new development. It also would not accord with the Council's Residential Design Guidance (2016) which seeks to ensure that hardstandings are not unsafe for pedestrians crossing.

Other Matters

10. The Council refers in its appeal statement to the effect of the hardstanding on the character and appearance of the area, identifying a harmful effect but qualifying this by reference to other similar development on the road. In any event, bearing in mind my assessment on the main issue above, a finding of no visual harm would not alter my overall conclusion.

Ground (a) and DPA Conclusion

11. For the above reasons, and taking into account all other matters raised, I conclude that the appeal on ground (a) should fail and that planning permission should be refused in respect of the DPA.

The appeal on ground (f)

12. This ground of appeal is that the requirements of the notice exceed what is necessary.
13. Section 173 of the Town and Country Planning Act 1990 (1990 Act) indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice in this case requires removal of the hardstanding and restoration of the land to its previous condition suggests that its purpose is to remedy the breach of planning control.
14. The appellant takes issue with the part of the requirement which stipulates rebuilding the dwarf wall. However, this represents the Council properly seeking to restore the land to its previous condition before the breach took place pursuant to s173(4) of the 1990 Act. Indeed, the Council has adduced photographic evidence as to the previous condition and the appellant does not dispute this.
15. However, the appellant makes the point that removal of the dwarf wall represented PD and I agree that this is correct. However, on the evidence before me, the last lawful state of the appeal property front garden was with the dwarf wall in place. The demolition of the wall and formation of the hardstanding was carried out as a single operation; demolition of the wall was necessary to facilitate the formation of the hardstanding and was part and parcel of the unauthorised development. Accordingly, it is not excessive for the notice to require the rebuilding of that wall as part of restoring the land to its former condition.
16. I am mindful that the enforcement regime is intended to be remedial and not punitive. However, removing the requirement to rebuild the dwarf wall would not remedy the breach of planning control. There are no lesser steps that would achieve that purpose. The appeal on ground (f) fails.

Overall Conclusion

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

Formal Decision

18. 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.

V Bond
INSPECTOR