
Appeal Decisions

Site visit made on 9 August 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 05 September 2022

Appeal A Ref: APP/N5090/C/22/3290902

Appeal B Ref: APP/N5090/C/22/3290903

Land at 1 Grey Close, London NW11 6QG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Daniel Ison against an enforcement notice issued by the Council of the London Borough of Barnet.
 - Appeal B is made by Mrs Joanna Skala-Ison against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/1594/20, was issued on 20 December 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 photographs no. 4 and aerial image), the works to include the reinstatement of the 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)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed.

Reasons

2. 1 Grey Close is a two-storey, semi-detached dwelling that lies on a quiet cul-de-sac. The property has generous gardens; part of that at the front is hard-surfaced and is used for the parking of vehicles.
3. An appeal made under Ground (c) is that that the matters alleged in the Notice, (if they occurred), do not constitute a breach of planning control. This is a legal ground of appeal where the onus lies with the Appellant to make their case on the balance of probability.
4. The Appellants set out in their appeal form that the operations do not amount to development under section 55 of the 1990 Act. They go on to say that the change of use is not a material one and that the works comply with the terms of a planning permission and the relevant condition has been complied with. This latter point, they explain in their statement, is made on the ground that the Council need only be consulted if the hardstanding were to cater for two cars. They have not, however, expanded upon their assertion that the works are not development.

5. For its part, the Council tells me that the area is covered by an Article 4 Direction that, amongst other things, removes permitted development rights to create hardstandings. Furthermore, it says that there is no planning permission that allowed the development that has occurred. These points have not been challenged by the Appellants, so I take them to be the case.
6. The evidence shows that in addition to the requirements of the planning legislation, permission to develop properties might also be required from the Hampstead Garden Suburb Trust (HGST).
7. The critical thing here is that I have not been provided with evidence to show that, on the balance of probability, planning permission was not required to create the hardstanding. The Appellants state on a number of occasions that the works that have been undertaken comply with HGST requirements and that they enhance the area and meet with the approval of neighbours. However, these are arguments on the planning merits of the development that have to be made under Ground (a). As no Ground (a) appeal has been lodged, I cannot take these arguments into account.
8. For the reasons given above, the appeal under Ground (c) fails.

'Hidden' Ground (f)

9. In their final comments, the Appellants state that the terms of the Notice are 'not proportionate, and the consequences would be deeply detrimental to the appearance of HGS' [Hampstead Garden Suburb]. This is an argument that falls to be made under Ground (f), and I can deal with it as a 'hidden' appeal on this ground without prejudice to either party.
10. A Ground (f) appeal is that 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.
11. The purpose of the Council's Notice is clearly to remedy the breach of planning control. The Council's position is that this cannot be done without compliance with the requirements in section 5 of the Notice. The Appellants have proposed alternative schemes that they say they are working up with the assistance of the HGST. However, a Ground (f) appeal cannot be used to gain planning permission where there is no Ground (a) appeal that allows for the planning merits of the development or any alternative to be assessed. I cannot therefore take these alternatives into account.
12. On the basis of the evidence before me that I can take into account, I find that the steps required by the Notice are not excessive to remedy the breach of planning control. As such, the 'hidden' Ground (f) appeal fails.

Conclusion

13. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Roy Curnow

Inspector