



Appeal Decision

Site visit made on 18 October 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2022

Appeal Ref: APP/A5840/C/21/3287873

The Common Parts of the Jam Factory Development, 27 Green Walk, London SE1 4TQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by AHGR Limited against an enforcement notice issued by the Council of the London Borough of Southwark.
- The notice was issued on 20 October 2021.
- The breach of planning control as alleged in the notice is:
 - 3.1 Without planning permission, the construction of wooden decking, composite floor tiles and metal box planters ("the Unauthorised Works") in the position shown hatched blue on the attached plan and shown in the attached photograph.
 - 3.2 The Unauthorised Works constitute unauthorised development for which no planning permission exists.
 - 3.3 Furthermore they are contrary to the landscaping scheme approved by the Council pursuant to application 09.AP.0700 (Details of landscaping) as required by condition 4 of planning permission 06/AP1116 because the wooden decking, composite floor tiles and metal box planters are not approved features.
- The requirements of the notice are to:
 - 5.1 Return the Land to its condition before the breach occurred;
 - 5.2 Remove the Unauthorised Works from the Land including any material used to construct or which forms part of or is situated on the wooden decking;
 - 5.3 Reinstate the paving removed as part of the installation of the Unauthorised works; and
 - 5.4 Removal and properly dispose of all debris and rubbish arising from compliance with this Notice.
- The period for compliance with the requirements is: 30 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.

Decision

1. It is directed that the enforcement notice is corrected by:
 - At section 3, the deletion of sub-paragraphs 3.2 and 3.3.
 - The deletion of the plan attached to the enforcement notice and the insertion of the plan attached to this decision at Appendix 1.
2. Subject to the correction above, 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 1990 Act as amended.

Preliminary Matters

3. The appellant has requested a hearing on the basis that I may wish to clarify matters by questioning and there is likely to be neighbour interest. While I

have raised matters regarding the notice with the parties, I have been able to do this in writing. I acknowledge that there is considerable interest in the appeal, however, much of the concern relates to the appellant's intentions for amenity space within the overall development rather than the works which have been carried out. As the appellant states, the issues are relatively straightforward and so I consider the written representation procedure is appropriate in this case.

4. Since the issue of the enforcement notice, the Council has adopted The Southwark Plan 2019-2036 (February 2022)(the SP). The SP replaces the Core Strategy and Southwark Plan 2007. The Council has provided a copy of those policies of the SP it considers of relevance to the appeals and the appellants have been given the opportunity to comment on these policies through the appeal.
5. The notice states it was issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of Section 171A(1) of the Town and Country Planning Act 1990 (as amended)(the Act). However, within the allegation, the Council makes specific reference to the works being contrary to the landscaping scheme approved by the Council pursuant to application 09/AP/0700 (Details of landscaping) as required by condition 4 of planning permission 06/AP/1116 because the wooden decking, composite floor tiles and metal box planters are not approved features.
6. I raised with the parties whether the notice should refer to section 171A(b) of the Act, failing to comply with any condition or limitation subject to which planning permission has been granted, rather than section 171A(a) carrying out development without the required planning permission and whether the allegation should be corrected to reflect a breach of condition. Both the Council and the appellant advise they consider the allegation should refer to operational development. In the interests of clarity, I shall delete paragraphs 3.2 and 3.3 from section 3 of the enforcement notice. I consider it is unnecessary to insert the paragraphs in section 4 of the notice.
7. The alleged breach states 'the construction of wooden decking'. It is clear from the evidence that a section of wooden decking was *in situ* prior to the carrying out of the breach. There is ambiguity as to which wooden decking the notice is alleging has been constructed and therefore which wooden decking it requires to be removed. The Council has provided a corrected plan which excludes the area of decking which was *in situ* prior to the breach. The appellant has had the opportunity to comment on this through this appeal. I consider deleting the plan attached to the notice and inserting the amended plan would make it clear which wooden decking the enforcement notice requires to be removed without causing injustice to either party and so I shall correct the notice accordingly.

Ground (c)

8. An appeal under ground (c) is made on the basis that those matters (if they occurred) do not constitute a breach of planning control. Although the appellant did not tick ground (c) on their appeal form, they have raised whether the planters are in fact development, given that they are moveable. The Council has responded to this point in its statement and so there would be no injustice in my consideration of this under ground (c).

9. Section 55 of the Act describes development as 'the carrying out of building, engineering, mining or other operations in, on, over or under land...'. The planters have been placed around the bottom step upon which the timber decking has been constructed. Although the planters individually are modest in size, collectively they cover a substantial area and, given their position at the bottom of the step, impede movement within the site. While they are not fixed to the ground, they are very difficult to move as a result of their weight and could only be easily removed if emptied of soil and vegetation.
10. The enforcement notice was issued on 20 October 2021 and the planters have remained *in situ*. The planters are clearly visible to individuals using the communal area. Given the number of planters, their location within the site and the length of time they have been *in situ*, there has been a physical alteration to the land which has a degree of permanence to the land itself. As a matter of fact and degree, I consider their siting is of sufficient substance, scale and permanence, so as to constitute development for the purposes of the Act.
11. The appellant disputes that the decking is a structure. While the appellant has not raised this matter under ground (c), I have also considered whether the decking would be considered operational development for the purposes of the Act. Building operations include other operations normally undertaken by a person carrying on business as a builder. Section 336 of the Act defines building as 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.
12. The decking would have been constructed on site and, while it may not be load bearing, it is likely to have been constructed by an individual with sufficient skill to ensure the various sections fit together so that it can withstand regular use by potential users. Although the composite floor tiles have only been placed on the decking, in my view, they form part and parcel of the works which have been carried out.
13. The decking does not appear to have been moved since the enforcement notice was issued and, given its substantial size, I consider it highly unlikely it would be moved. I consider that given its size and permanence, as a matter of fact and degree, the decking is a building for the purposes of the Act.
14. Since I have found the decking and planters are operational development and since planning permission has not been granted for their erection, the appeal under ground (c) must fail.

Ground (a)

15. An appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged. The provisions of section 177(5) of the Act allows me to grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters.
16. The appellant has installed decking, a series of planters and floor tiles. The decking is unfinished and the composite floor tiles are not fixed to the decking. The appellant has provided a plan showing the intended 'improvements' at Appendix 5 of its statement. The plan shows a substantial area of decking, with

play equipment and a safety fence to the play area. The bike rack is also shown as being relocated. However, this is not what has been constructed at the site, nor is it the subject of the enforcement notice and so I cannot consider this scheme under ground (a) since it does not form part of the matters stated in the breach.

Main Issues

17. The main issues of the ground (a) appeal are the effect of the appeal scheme on:

- The character or appearance of the area, bearing in mind it is within the Bermondsey Street Conservation Area (BSCA); and
- Accessibility and inclusivity within the site; and
- The living conditions of nearby residents with regards to noise.

Reasons

Character or appearance

18. The development is within the Bermondsey Street Conservation Area (BSCA). In my view, the significance of the BSCA is derived from the pattern of development, and the traditional and often utilitarian design, reflecting its industrial heritage. The Jam Factory is stated to be the largest building of heritage value within the area. The development sits between blocks A and D of the Jam Factory development, with Block A part of the Edwardian factory and Block D a recent addition.
19. Despite being a semi-private space, the development is highly visible to occupants of blocks A and D. The space between the buildings forms part of a coherent landscaping scheme across the development which has a simple, uncluttered appearance which complements the industrial heritage of the area and makes a positive contribution to the character and appearance of the BSCA.
20. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the BSCA. Furthermore, paragraph 199 of the National Planning Policy Framework ('the Framework')(2021) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
21. Although a number of the steps have previously been finished with wooden decking, it runs down the centre of the paving stone steps in a symmetrical fashion, whereas the decking which is the subject of this enforcement notice is not symmetrical and in places is unfinished, with composite floor tiles laid on top. Metal planters have been placed around the decking, a number of which appeared dented. Although I saw residents of some of the units have placed planters on their balconies, they are far less prominent than the metal planters which are the subject of the enforcement notice.
22. The decking, planters and composite floor tiles are incongruous features which detract from the simplistic design of the landscaping elsewhere within the appeal site. As a consequence, they diminish the character and appearance of

the area and fail to conserve or enhance the BSCA, contrary to policies P13 and P21 of the Southwark Plan (2022)(the SP) and HC1 of the London Plan (2021)(LP) which seek to protect the historic environment, policy P20 of the SP, which seeks to protect conservation areas and policies P14 of the SP and D4 of the LP which both seek good design.

23. Paragraph 189 of the Framework states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance. Paragraph 202 goes on to advise that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use. Given the development is located within a semi-private space, I consider that the harm arising to the significance of the designated heritage asset would be less than substantial in the context of paragraph 202 of the Framework.
24. Although the planters contained plants at the time of my site visit, they appeared poorly maintained with weeds and a number of plants which appeared to have failed. In my view, they do not provide residents with a better outlook, nor does the development enhance amenity space. While it is not unreasonable to wish to upgrade the common area given its age, the development which has been carried out actually restricts movement within the site and in its unfinished state is likely to deter residents from using this part of the site. I consider there are no benefits which outweigh the harm I have identified to the BSCA, the conservation of which I attribute great weight to.

Accessibility and inclusivity

25. The appeal site comprises residential flats which look out onto the common parts of the former Jam Factory. The planters are located at the bottom of a set of stairs, adjacent to a bike storage area. While it is still possible for individuals to use the adjacent bike stand, the space around the bike stand is restricted by the planters, which is likely to make it more difficult to use. Although bikes were stored on the stand at the time of my visit, I consider over time this is likely to deter occupants of the flats from using the bike stand. This is contrary to policy P53 of the SP and policy T5 of the LP which both seek cycle parking which is well-located.
26. While it is still possible to move up and down the stairs on one side, the location of the planters significantly impedes movement within the site and the decking, which is unfinished, provides an uneven surface which, in my view, may cause individuals using the site to trip. This is contrary to policies P13 of the SP which seeks development which eases the movement of pedestrians amongst other things, policy P14 which seeks accessible and inclusive design for all, and policy D5 of the London Plan (2021) which seeks development which achieves the highest standards of accessible and inclusive design and is able to be used and exited safely and easily.
27. The Council and numerous interested parties have drawn my attention to a garden and play space which is provided elsewhere within the site, on the other side of Block A. I understand that access to this area has been restricted while the enforcement case has been ongoing. While I note the concerns which have been raised, this does not form part of the breach.

28. Although the appellant's intention may have been to provide play space at the location of the breach, as set out above, this is not what has occurred, and I cannot therefore consider it as part of this appeal. Consequently, I find no conflict with policy S4 of the LP which seeks to increase opportunities for play and informal recreation.

Noise

29. The communal area is overlooked by a number of residential units. The enforcement notice alleges that the unauthorised works over intensify the use of the communal space and suggests that if the space is not used by those that live closest to it, their amenity will suffer. However, the Council's concerns in this regard appear to relate to how the appellant intends the area to be used rather than how it actually is used.
30. I note the Inspector in respect of a previous appeal concerning landscaping within the site, reference APP/A5840/C/20/3263593 found there would be no harm to living conditions from noise. While the appeal scheme before me is different, I have no reason to come to a different conclusion in this case. Neither the appeal before the previous Inspector, nor this appeal concerns play equipment and so while it may have been the appellant's intention to implement such a scheme, this is not what has been carried out.
31. As set out above, I consider the works which have been carried out are actually likely to deter residents from using this part of the site given the impediment to movement. Consequently, there is no harm to living conditions and no conflict with policy P56 of the SP which seeks to protect amenity and policy D14 of the LP which seeks to avoid significant adverse noise impacts on health and quality of life. This is a neutral factor in my consideration of the appeal.

Ground (a) conclusion

32. Thus, for the reasons given above, I conclude that the appeal scheme conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

33. 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.
34. 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.
35. Given the requirements of the notice, which include the requirement to return the land to its condition before the breach occurred, it is clear that the purpose of the notice is to remedy the breach.

36. The appellant suggests that the proposals as set out in the ground (a) appeal are sufficient to remedy any alleged breach and would include the retention and slight modification of the steps. However, I have considered the planning merits of retaining the decking under ground (a). It would not be possible for the land to be restored to its previous condition if the decking is retained. Consequently, its removal is not excessive.
37. The appellant also suggests replanting shown on the submitted plans would be sufficient to remedy any breach and makes reference to replacement/remodelled planter walls and replacement good quality planting in their final comments. However, these comments appear to relate to the previous appeal, reference APP/A5840/C/20/3263593 and not the appeal scheme before me.
38. Thus, for the reasons given above, the appeal under ground (f) must fail.

Ground (g)

39. An appeal under ground (g) is made on the basis that any period specified in the notice...falls short of what should reasonably be allowed.
40. The appellant asserts that 30 days is insufficient time for the works to be carried out in light of the Covid-19 pandemic, which has resulted in scarcity of materials, isolation of workers and other factors outside of the appellant's control and suggests a period of 4 months is appropriate. However, I am unaware of any remaining Covid-19 restrictions which are likely to impede the appellant's ability to comply with the notice.
41. An interested party suggests the compliance period is too long. While the works may have been carried out in a lesser period of time, reducing the compliance period would cause the appellant injustice. Given the extent of the works that are required, I consider 30 days is sufficient time to source the materials required and to carry out the works.
42. Thus, the appeal under ground (g) fails.

Overall Conclusion

43. 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.

M Savage

INSPECTOR



Appendix 1: Plan

This is the plan referred to in my decision dated: 29 November 2022

by **M Savage BSc (Hons) MCD MRTPI**

**Land: The common parts of the Jam Factory development, 27 Green Walk,
London SE1 4TQ**

Reference: APP/A5840/C/21/3287873

Scale: Not to scale

