



Appeal Decision

Site visit made on 7 December 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeal Ref: APP/T5150/C/22/3298424 76 Teignmouth Road, London NW2 4DX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Farhad Nawrozzadeh against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 30 March 2022.
- The breach of planning control as alleged in the notice is without planning permission, the installation of hardstanding to the front of the premises, the installation of metal gates, and the erection of brick boundary walls and railings to the front and side of the premises.
- The requirements of the notice are
STEP 1 Remove the unauthorised hardstanding to the front of the premises.
STEP 2 Remove the metal gates and the boundary walls and railings to the front and side of the premises.
STEP 3 Remove all items, materials and debris, resulting from the compliance with Steps 1 and 2 from the premises.
- The period for compliance with the requirements is 4 months.
- 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.

Summary of Decision: Subject to variation, the enforcement notice is upheld and the appeal is dismissed.

1. It is directed that the enforcement notice is varied by :

Deleting the period of compliance of "*4 months*" from the notice and substituting it with "*7 months*"
2. Subject to the variation, 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.

The appeal under ground (a)

The Main Issue

3. The main issue is whether the development preserves or enhances the character or appearance of the Mapesbury Conservation Area (the Conservation Area).

Reasons

4. Conservation Areas are designated heritage assets as defined by the National Planning Policy Framework (the Framework) and great weight is to be given to their preservation and conservation. Section 72 of the Planning (Listed

Buildings and Conservation Areas) Act 1990 also requires that special attention be given to the desirability of preserving or enhancing the character or appearance of a conservation area.

5. The appeal site is located within the Mapesbury Conservation Area, which is characterised by large unaltered town houses from between 1895-1920 situated along tree-lined streets. Dwellings largely have deep frontages and low brick boundary walls located between tall piers. The Conservation Area Character Appraisal refers to the special character of the area being based not only on the design of the buildings but also on their relationship to the street scape and each other. A number of frontages have hedging above the low front walls. Low traditional walls with a mix of soft landscaping to the front including hedges are still characteristic features of the Conservation Area and contribute to its green natural context.
6. The appeal dwelling is a two storey detached dwelling within a residential street with a mix of detached and semi-detached properties. There is no dispute that the house itself retains its Arts and Crafts architectural style. However, the character of the Conservation Area is not limited to dwellings and also includes front gardens and boundary treatments.
7. Next door, No 78 has a traditional low wall to the front with slightly higher pillars to each end and no vehicular access to the front. The pedestrian gate adjoining the appeal dwelling is around a metre high. To the other side of the appeal dwelling, No 74 has a substantial hedge and a tree above a low traditional wall. Whilst No 74 does have gates made up of railings, the mature hedging and low wall are the prominent features of the boundary treatment. Whilst some dwellings do have off-street parking, a number of those dwellings do still have traditional boundary treatments including hedging and also have elements of soft landscaping within an open frontage.
8. The development to the front of the appeal dwelling consists of the installation of hardstanding, metal gates, and the erection of brick boundary walls and railings to the front and side. Photographs provided in connection with a planning application for retention of the boundary treatment show the previous boundary treatment as being a lower brick wall with a motif to both the front and the side boundary to No 74 with a timber fence to the other side.
9. At the appeal site, the boundary treatment consists of a gate made up of railings for vehicular access, a section of wall with an inset of railings and a second narrower non-vehicular gate all linked by 3 piers. The brick wall elements and the piers are topped with white coping stones. The side boundary with No 78 consists of railings and the other side boundary consists of a wall of similar design to the front wall. The bulk of the front area now has hardstanding with only a modest section of soft landscaping in front of the side boundary wall with No 74.
10. The use of red bricks for the boundary walls topped with white coping stones is in contrast to the more muted colours of existing boundary treatments. The absence of any hedging or very limited soft landscaping adds to the harsh appearance created by the overall height of the boundary treatment combined with the use of red bricks and railings. The vehicular gate is particularly imposing as it is higher than the piers. Later additions to the development include a strip of artificial grass on top of part of the hardstanding and some potted plants but they are not a substitute for permanent soft landscaping. The

Council states that there is around 5% soft landscaping at the front. Residential Extensions & Alterations SPD 2 (SPD) provides for a 50/50 balance between soft and hard landscaping. The appellant accepts that the amount of hardstanding would exceed the amount recommended in guidance but there would be no planning harm. However, the Conservation Area designation is intended to prevent the piecemeal erosion of the significance of that designation.

11. The appellant has suggested that whilst not considered necessary, conditions could overcome any perceived planning harm. However, the conditions suggested are extensive and include the submission of details relating to tops of walls and brick piers, further soft landscaping to increase coverage to 50% of the front garden and details of materials of hardstanding, the replacement of metal railings with hedges and a change of materials requiring gates to be constructed of wood. The extent and nature of the conditions suggested means that there is no certainty as to what any final scheme would look like other than that the height of the boundary treatment and use of red bricks would not alter.
12. If the appellant wishes to propose an alternative scheme, a planning application with relevant details which would be the subject of a formal consultation process including third party representation would need to be submitted to the Council. The Council's decision to limit the requirements of the notice to removal of the boundary treatment and hardstanding does not alter the scope of a ground (a) appeal.
13. The appellant considers that the boundary treatment at the appeal dwelling is similar in form to others in the street has provided a series of photographs of other frontages and boundary treatments along Teignmouth Road. However I do not know the circumstances of those sites and, in any event, each case must be considered on its own merits.
14. Photographs provided show that Nos 38-42 and No 46 have boundary treatments with their own symmetry in terms of style with front boundaries are largely made up of brick pillars either side of insets of square stones of different shapes and sizes. No 36 sits within this style of boundary treatment. These properties generally have open vehicular access rather than gates made up of railings.
15. No 72 is in close proximity to the appeal dwelling and has hedges to the front and no gates. No 45 does have railings but retains its original low boundary wall and has mature trees. No 4 has lighter bricks and mature hedging both to the railings and soft landscaping within the frontage. The photograph provided of No 33 Mapesbury Road shows only a side boundary rather than the front boundary treatment. The appeal dwelling has two gates made up of railings, one of which is higher than the piers, extensive hardstanding with minimal landscaping and red brick walls with white coping stones. From my site visit observations and having considered the photographs, I do not consider that any of the examples provided are comparable to the appeal dwelling. The existence of some examples of railings or hardstanding does not in any event justify further alterations which will be detrimental to the Conservation Area as a whole.
16. For the reasons above, I do find that the development that is harmful to the character and appearance of the Conservation Area. This is contrary to Policy

DMP1 and Policy BHC1 of the Brent Local Plan which collectively refer to development complementing the locality and to conserving heritage assets. Policy HC1 of the London Plan also provides for the conservation of heritage assets and appreciation of the surroundings. It is also contrary to Policy BD1 of the Brent Local Plan which expects development to show how they positively address all the relevant criteria in the London Plan design policies and the Brent Design Guide SPD1. The development is also in conflict with Policy BT2 of the Brent Local Plan which requires off street parking to provide adequate landscaping (in the case of front gardens 50% coverage) and Policy D3 of the London Plan which refers to development enhancing local context.

17. Paragraph 199 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
18. Under Paragraph 202 of the Framework, this harm should be weighed against any public benefits of the development. The appellant indicates that the hardstanding has adequate run off of surface water. A supporter of the development states that any issues with insufficient run off for water could be resolved without removing all the groundwork and that the property was previously not in a good state of repair. However, other schemes could have been considered and designed to be in keeping with the prevailing character of the Conservation Area and it is for the appellant to obtain any necessary approvals for any proposed alternative scheme. I do not consider that the any benefits of the development outweigh the harm to the Conservation Area to which I attach great weight. The appeal under ground (a) therefore fails.

The appeal under ground (f)

19. Section 174(2)(f) of the Act states that an appeal may be made on the ground 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 those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. It is therefore necessary to consider whether the purpose of the notice is to remedy the breach of planning control or remedy any injury to amenity. As the requirements are to remove the hardstanding and the boundary treatment, as stated by the Council, the purpose of the notice is to remedy the breach.
20. The appellant states that there a number of obvious alternatives or lesser steps which would achieve the purpose of the notice. However, this argument repeats the suggested use of conditions which has been already addressed under ground (a) as the request is to grant planning permission subject to conditions. Case law¹ does support the view that where the appellant has pursued both ground (a) and ground (f) appeals as in this case, any "obvious alternative" should be considered by the Inspector. However, in the absence of any approved new scheme, there is no obvious alternative. No amended wording is suggested by the appellant under ground (f) but given the extent of the conditions proposed, as indicated under ground (a), the appellant would need to submit a new planning application for consideration. Having addressed

¹ Tapeccrown Ltd v FSS& Vale of White Horse DC [2006] EWCA Civ 1744

conditions under ground (a) as part of the planning merits, it is not possible to vary the requirements under ground (f) to remove the need for a further planning application.

21. As the requirements of the notice are limited to removal of the development, and the purpose of the notice is to remedy the breach, the requirements are not excessive. The appeal under ground (f) therefore fails.

The appeal under ground (g)

22. The appellant has asked for a period of 12 months and refers to the need to find and appoint contractors for the removal. There would be some disruption to the public in terms of passers-by whilst the development is removed although disruption to motorists is likely to be less of an issue. The availability of workmen may now have improved since the Covid pandemic. Whilst there would be advance planning required, the actual removal of the hardstanding and the boundary treatment is likely to take considerably less time than the 12 months requested. The Council has indicated that 4 months is a reasonable period and that if an alternative scheme is submitted which is approved, it could also be implemented within that time frame. Whilst the requirements do relate to removal only, 4 months is a short period to allow for removal and the appellant clearly does wish to pursue an alternative scheme.
23. On balance, I do consider that a period of compliance of 7 months would allow time for the appellant to pursue an alternative scheme whilst arranging for the notice to be complied with. The appeal under ground (g) therefore succeeds to that limited extent.

Conclusion

24. For the reasons given above, I conclude that the appeal should not succeed. I shall vary and then 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.

E Griffin

INSPECTOR