



Appeal Decision

Site visit made on 21 September 2022

by **E Brownless BA (Hons) Solicitor (non-practising)**

an Inspector appointed by the Secretary of State

Decision date: 16 January 2023

Appeal Ref: APP/T5150/C/21/3283620

16 A-D St Gabriels Road, London, NW2 4RY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr Stephen McCormack against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice, numbered E/19/0723, was issued on 25 August 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of a hardstanding to the front of the property, the demolition of a brick boundary wall and two pillars, the erection of new brick boundary wall and three pillars to the front of the premises.
 - The requirements of the notice are to: (1) EITHER, remove all the hardstanding to the front of the premises, (2) OR, Remove the part of the hardstanding hatched in black and replace with topsoil where the hardstanding formerly stood, as shown in Plan A attached to this notice. (3) Erect another pillar with a white stone cap, which is approximately 2.4m from the pillar adjacent to 14 St Gabriels Road, so that the entrance way is no wider than 3m. (4) Plant a privet or laurel hedge along the boundary adjacent to no 14 St Gabriels Road. (5) Plant a privet or laurel behind the front brick boundary wall.
 - The period for compliance with the requirements is: six months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Act. 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: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.**
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Preliminary Matters

1. The Council have formally adopted the London Borough of Brent Local Plan 2019-2041 (the LP) in February 2022. I have therefore had regard to the policies of the LP in my determination of this appeal. As the Council's enforcement notice referred to the draft policies of the LP, and the adopted policies are not substantially different, it has not been necessary to revert to the parties on the application of those policies on the appeal scheme as they have already had the opportunity to comment upon them.

The Notice

2. At Step 2 of the requirements of the notice, it refers to the removal of 'part' of the hardstanding hatched in black. The attached plan shows two parts, not a part. Given the planting which the appellant has already undertaken in one of the two areas, it is clear what the enforcement notice intends, and I therefore take the view that this matter can be corrected without causing any injustice to the appellant or Council.

3. In order to remedy the breach of planning control, it is not excessive to require the removal of hardstanding. However, the Council's Supplementary Planning Document No 2 (January 2018)(SPD2) and the Mapesbury Conservation Area Design Guide (DG) both set out a requirement to maintain a 50/50 balance between hard and soft landscaped areas and 'Step 2' would partly achieve this aim without it being necessary to remove the hardstanding in its entirety. To this extent, it could be argued that the requirement to remove the entirety of the hardstanding would be excessive. However, the availability of Step 2 as a lesser requirement means that, viewed overall, the notice's requirements are not excessive.
4. It is put to me that the removal of hardstanding to the rear of the front boundary wall and the erection of a pillar at the position specified within the notice would prevent more than one car using the driveway. Whilst I accept that it could hinder the movement of two vehicles independently of each other, I am not satisfied that it renders it impossible for two vehicles to park to the front of the property simultaneously. Given that the DG stipulates a maximum driveway opening of 3 metres, and in the absence of any clear and compelling reasoning for the distance of 2.4 metres, I take the view that the notice can be varied to 3 metres without causing any injustice to the Council.

The appeal on ground (a)

5. The ground of appeal is that planning permission should be granted for the breach of planning control stated in the notice. Having regard to the reasons for issuing the notice, the main issues are:-
 - i) whether the development preserves or enhances the character and appearance of the Mapesbury Conservation Area; and
 - ii) the effect of the development on highway safety.

Reasons

Character and appearance

6. The Mapesbury Conservation Area ("the CA") is a predominantly residential area where the roads are wide and are often lined with mature trees and rows of closely spaced housing. It is characterised by two and three storey detached and semi-detached properties from the late 19th and early 20th century period. Dwellings are typically generously sized and are constructed in a limited palette of materials, namely, brick, terracotta, tile and timber. They are unified in their scale, high architectural quality and intricate detailing. Front garden areas are moderately sized. They are generally enclosed behind low front walls predominantly of brick with tall brick piers topped with decorative stone pier caps. Gardens are mostly neatly laid out with soft landscaping providing a softening element to areas of parking whilst also revealing the quality of design and detailing that is showcased within the frontages of the properties. Overall, the area has a distinctive character derived from a consistency of layout, scale and built form.
7. There is some evidence of alterations to the dwellings within the area. Alterations to buildings along St Gabriel's Road are relatively minor and the majority appear to be unaltered. However, I observed a number of front garden areas had been changed. These alterations predominantly include the removal of boundary walls, either wholly or in part, together with the

introduction of areas of hardstanding for vehicular parking and a consequent reduction in soft landscaping. Notwithstanding these changes, the dwellings and the majority of their front garden areas retain an attractive uniform appearance which make an important contribution to the character and appearance of the CA.

8. The appeal property is one of a pair of two-storey semi-detached dwellings located part way along St Gabriel's Road. It is an attractive dwelling that shares a number of the common characteristics of the CA and as such, I find that it makes a positive contribution to the significance of the heritage asset.
9. The DG sets out that walls and piers are to be built to match the original boundary design of the property and the particular road. It goes on to state that a vehicular access should not be wider than 3 metres and the pedestrian entrance must be separate from the driveway entrance and not combined with it. Whilst the opening appears to be no wider than the crossover that serves it, it is accepted by the appellant that the unauthorised wall is shorter in length than the one it replaces. As such, by reason of this shorter length, the unauthorised development fails to match the original boundary design.
10. By reason of the boundary being some 40cms shorter than the boundary it replaced, taking the Council's measurements, which have not been disputed by the appellant, the resultant driveway opening stands in the region of 5.4 metres. Moreover, it has reduced the continuity of the enclosed street frontage and the resultant gap is overly large, eroding the sense of enclosure to the garden and it appears visually discordant within the streetscene. This impression is accentuated by the inclusion of extensive hardstanding and further emphasised by the use of the area for the parking of vehicles.
11. There is little evidence before me to demonstrate that the original boundary design of the appeal dwelling incorporated a separate pedestrian entrance. Nevertheless, these are present along St Gabriel's Road and given that the appeal scheme includes a combined entrance, the unauthorised development fails to make enhancements in this manner which would be of a benefit to the CA.
12. SPD2 and the DG require front garden areas to maintain a 50/50 balance between hard and soft landscaping. In instances, where it is not possible to achieve this and less soft landscaping is proposed, the design of the front garden should ensure a high-quality design. Some areas of soft landscaping have been incorporated. However, these are minimal in size and they have little effect in softening the unauthorised development and reducing its harmful effect. Furthermore, the inclusion of an extensive area of hardstanding appears unduly dominant and at odds with the prevailing softer and unassuming character of front gardens.
13. It has not been demonstrated that the hardsurfaces of the appeal scheme have been constructed using traditional and permeable materials as required by the DG.
14. I have had regard to a number of photographs submitted by the appellant. These demonstrate the presence of some properties without front garden boundary walls and with extensive areas of hardstanding, a number of which I observed at the time of my site visit. However, in my view these do not provide justification for the scheme and their presence points to the need to carefully

control the development of front gardens if the character and appearance of the CA is to be preserved. In this instance, I take the view that the unauthorised development continues the pattern of the erosion of the historic character of the area which the DG seeks to stem and reverse.

15. Similarly, I have had regard to the appellant's photographs of the appeal site prior to the unauthorised development and the extent and condition of the previous hardstanding and boundary treatment. However, since retention of the original hardstanding and wall is no longer an option, this limits the weight I can attach to any improvement over it, and the new hardstanding and boundary have been judged on their merits alone. The appeal scheme nonetheless fails to sustain and enhance the significance of the heritage asset and reinforce the streetscene. I have also had regard to the appellant's extract of the Land Registry document however, it has not been put to me that the use of the front garden area for the parking of multiple vehicles should cease.
16. Overall, I consider that the unauthorised development has an erosive and harmful effect on the character and appearance of the CA. It therefore fails to preserve the significance of the heritage asset and thus it conflicts with LP Policies DMP1 and BHC1 insofar as these require high quality development that contributes to local distinctiveness and preserves the significance of a heritage asset by, among other things, respecting and reinforcing the streetscene and frontages. It also fails to adhere to the guidance of SPD2 and the DG, the requirements of which are set out above.
17. The harm to the CA identified would amount to "less than substantial harm". As such, paragraph 202 of the Framework, requires the harm to be balanced against the public benefits of the proposal. I have had regard to the submitted photographs and the appellant's desire to improve the appearance of the external area and provide a safer boundary treatment given the previous poor condition of the wall. However, since retention of the original is no longer an option here, there is limited public benefit.
18. Moreover, the Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. It goes on to state 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. In this instance, and without the fallback of retaining the previous wall and hardstanding, I find that there would be limited public benefit and this would be insufficient to outweigh the identified harm to which I attribute great weight. Therefore, in addition to the conflict with the policies of the development plan, the appeal scheme also fails to comply with national policy outlined in the Framework.

Highway safety

19. The appeal site is located on St Gabriel's Road, an unclassified road with a demand for on-street parking along its length. There is currently a dropped kerb that extends across part of the highway frontage to the appeal site. The vehicle crossover provides access to off-street parking to the front of the appeal dwelling. Beyond the vehicle crossover, to each side, the kerb is raised and along which there is space available for vehicles to park parallel to the road.

20. The unauthorised development has shortened the extent of the boundary wall such that it aligns with the edge of the vehicle crossover. As a result, the opening to the driveway is wider and it appears to be possible for a vehicle to access and egress the appeal site whilst a second vehicle is parked simultaneously within it. The Council are concerned that due to the excessive width of the vehicular opening this fails to prevent the illegal crossing of the pedestrian footway, to the detriment of pedestrian safety.
21. However, evidence of harm has not been presented by the Council and I therefore find that it has not been demonstrated that the unauthorised development would cause unacceptable harm to pedestrian and highway safety. There would be no conflict with the provisions of LP Policy BT2 insofar as it seeks to minimise the negative impact of additional parking on existing parking, highways and other forms of movement or the environment.

Other Matters

22. It has been put to me that the extent of the unauthorised hardstanding is less than it was before the works were carried out. However, there is limited evidence before me to substantiate this view and, moreover, this together with general support for the unauthorised development from third parties does not provide adequate justification for the harm that has been caused.
23. Reference has been made to the absence of 'Plan A' from the copy of the notice that was sent to neighbouring occupiers when they were notified of the appeal. The appellant suggests that neighbouring occupiers are not properly informed of the extent of works required by the notice. However, several third parties have provided their views on the appeal scheme and none have reported a deficiency with the notice in this regard.
24. I have had regard to the appellant's evidence regarding the 'established use' of the front garden area for some 40 years. However, the enforcement notice attacks operational development including the creation of new hardstanding, rather than the principle of car parking.

Conclusion

25. I have concluded that the unauthorised development does not cause unacceptable harm with regards to pedestrian and highway safety. However, I have concluded that the appeal scheme fails to maintain and enhance the character and appearance of the CA. Notwithstanding the limited public benefit of the scheme, paragraph 199 of the Framework makes it clear that great weight should be given to the asset's conservation, irrespective of whether the harm amounts to 'less than substantial harm' to its significance. Any harm to, or loss of, the significance of a heritage asset should require clear and convincing justification. In this instance, the limited public benefits arising from the proposed scheme do not outweigh the harm to the heritage asset, to which I attach considerable importance and weight. The proposal would conflict with the aims of the Framework to conserve and enhance the historic environment.
26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with the variations specified below and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Formal Decision

27. It is directed that the enforcement notice is varied in Schedule 4 by:

- The deletion of the word “part” and the substitution of the word “parts” in Step 2.
- The deletion of the words “approximately 2.4m” and the substitution of the words “3 metres” in Step 3.
- The insertion of the word “hedge” in Step 4.

28. Subject to the variations, 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.

E Brownless

INSPECTOR