



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: 17 January 2023

Appeal Ref: APP/T5150/C/22/3293468

Tregenna Court, Harrow Road, Wembley, HA0 2EH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Chartwell Land Limited against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, numbered E/19/0129, was issued on 18 January 2022.
- The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref 12/2449 granted on 28 June 2013.
- The development to which the permission relates is: 'Extension to time limit for implementation of full planning permission 07/2297 dated 15 September 2009 for the erection of 2-storey building containing 6 self-contained flats, 4 single-storey garages, refuse stores, cycle parking, associated landscaping, with new access pathways, on land to rear of existing block of flats ("a car free development"), and subject to a Deed of Agreement dated 20th August 2009 under Section 106 of the Town and Country Planning Act 1990, as amended and subject to the Deed of Variation dated 28th June 2013'.
- The condition in question is no 7 which states that: 'Notwithstanding any landscaping details submitted with the application, prior to commencement of works on site, a detailed scheme of landscaping for the areas within the site surrounding the building and garages, depicting the size, density and number of trees, shrubs and plants, rooting systems, retention of any existing landscaping, means of enclosure, areas of hard and soft landscaping and any other features on the site shall be submitted to and approved in writing by the Local Planning Authority, such details shall also include tree planting along the northern site boundary. The landscape work shall be fully completed during the first available planting season following completion of the development hereby approved. Any trees or shrubs which, within 5 years of planting, die, are removed or become seriously damaged or diseased, shall be replaced with others of the same species and size and in the same locations, unless otherwise agreed in writing with the Local Planning Authority.'
- The notice alleges that the condition has not been complied with in that: the landscaping works have not been completed in line with the detailed scheme of landscaping approved by the Local Planning Authority.
- The requirements of the notice are to:
 1. Alter the grounds of the premises to provide the landscaping as set out in the attached *External Lighting Proposal & Car Parking Layout* plan. Ensure that all areas marked as grass, are natural grass and laid as lawn, that all shrubs and trees are planted and that any hardsurface/roadway is dug up and removed and replaced with topsoil and the necessary planting/landscaping/grass where applicable to comply with the plan.
 2. Ensure that any soft landscaping works, installed as part of STEP 1, that is removed, dies or becomes seriously damaged or diseased, is replaced using similar size and species and in the same position as that shown on the plan.
- 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 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: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. Since the enforcement notice was issued, the Council have formerly 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. It has not been necessary to revert to the parties on this matter as the notice referred to the draft policies of the LP. The Council's evidence advises that these policies were adopted without modification.
2. The appeal is lodged on ground (a). Ground (a) is '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 is the case here, that the condition concerned ought to be discharged'.
3. When a notice is appealed on this ground together with the payment of the relevant fee, the appellant is deemed under s177(5) to have made an application for planning permission in respect of the matters stated in the notice as constituting the breach of planning control.
4. The notice alleges a breach of condition 7 which concerns the carrying out of a landscaping scheme. The appellant has submitted drawing GLA-748-004 (Landscape Proposals Plan, "plan 004"). The plan attached to the notice is drawing GLA-748-100 Rev A (Car Parking & External Lighting Plan, "plan 100"). The scheme has not been carried out in accordance with either plan and I note there are differences between these plans. However, insofar as these plans relate to issues of landscaping, the differences are minor and the plan attached to the notice is no more onerous than the requirements of the Landscape Proposals Plan.
5. While I do not wish to alter what has been approved under the terms of condition 7, I note some contradiction between the approved landscaping details on plan 004 the approved car parking lighting details on plan 100. It will be necessary to resolve that contradiction as far as practicable in this Decision.
6. Drawing GLA 887-500 Rev C ("plan 500"), showing an alternative landscaping scheme incorporating geo-cellular attenuation, has been provided. While improved site drainage may be welcome, it is beyond the scope of the landscaping scheme required by condition 7 and therefore cannot be considered in this appeal.

The appeal on ground (a)

7. The alternative landscaping scheme shown on plan 500 is neither what has been carried out nor what was previously approved under condition 7. Consequently, I consider that the proposed alternative scheme does not amount to part of the matters stated within the notice. Given that a deemed planning application is made in respect of the development as alleged and carried out, there is no mechanism for incorporating any revised plan into any deemed planning permission that may be granted. Therefore, the deemed planning application can only relate to what had been carried out instead of the approved landscaping scheme when the notice was issued.

8. Having regard to the reasons for issuing the notice, the main issues are:-

- i) the effect of the landscaping that has been carried out on the character and appearance of the area; and
- ii) whether the landscaping that has been carried out would comply with development plan policies which seek to ensure that development will be made safe for its lifetime without increasing flood risk elsewhere.

Character and appearance

9. Harrow Road is predominantly characterised by residential dwellings interspersed with some commercial uses. A diverse range of built form exists ranging from modestly sized two-storey semi-detached dwellings to large blocks of flatted development. There is considerable variation in the age and architectural style of buildings. Materials are mixed and rooflines and architectural features are varied. Notwithstanding this variety, buildings are generally set back from the highway within spacious plots. A pleasant degree of separation exists between the built form. Mature trees and extensive areas of soft landscaping provide a sylvan backdrop to properties and a beneficial respite within the built environment. Overall, the area has an attractive, spacious and verdant suburban character.
10. The appeal site comprises a large, long, rectangular plot with a frontage to the highway. A broadly L-shaped block of flats is positioned towards the boundary with Harrow Road, with a smaller block of terraced housing located towards the rear boundary. Notwithstanding the extent and scale of these buildings, by reason of their position set within a large, spacious plot with a number of mature trees and some areas of soft planting, the appeal site shares some of the common characteristics of the area and thus makes a modest contribution to its character.
11. The appeal scheme has introduced a sizeable area of hardstanding. I am advised by the Council, and the submitted Google Earth documents show, that previously there was no built form and the area comprised soft landscaping. Presently, the space is accessible to motor vehicles and at the time of my site visit it appeared to be used for parking. As a result of the loss of a significant area of garden land, this has altered the site's character through the erosion of its spacious nature together with an increased urbanisation of the plot. This effect is compounded given the absence of additional soft landscaping to the front boundary adjacent to Harrow Road and within private rear gardens of dwellings adjoining the northern boundary of the site. Overall, the unauthorised development is at odds with, and unsympathetic to, the spacious and verdant character of the area.
12. Albeit the unauthorised hardstanding is largely hidden from public view given its central position within the site and the surrounding arrangement of built form, it nonetheless remains readily visible from the outdoor amenity space and from a number of windows of dwellings within the appeal site and neighbouring properties. The harmful effect would be readily apparent from these locations.
13. For these reasons, I consider that the appeal scheme is harmful to the character and appearance of the appeal site and the surrounding area. There would be conflict with LP Policies DMP1 and BT2 and Policies T6 and T6.1 of the

London Plan (2021) insofar as these policies seek to ensure a development will be acceptable in terms of, among other things, its siting, layout, scale, type, materials and design to provide high levels of external amenity and to complement the locality. Furthermore, the policies require that additional parking provision should not have a negative impact on the environment and should preserve features of a garden that make a significant contribution to a building's setting and the character of the surrounding area.

Flood risk

14. LP Policy BSU14 sets out that development that would impact on the current drainage regime must be accompanied by a drainage strategy and will be required to use sustainable drainage measures to control the rate and volume of surface water run-off. It goes on to state that proposals that fail to make adequate provision for the control and reduction of surface water run-off will be refused. LP Policy BSU13 has similar aims requiring development to demonstrate that it will be resistant and resilient to all relevant sources of flooding including surface water and in particular, that a proposal will minimise the risk of flooding onsite and not increase the risk of flooding elsewhere.
15. In this instance, a hardstanding has been constructed in tarmac, an impermeable and non-porous material, where permeable and porous soft landscaping had been approved under condition 7. It is accepted by the appellant that 'the area is liable to flooding' and therefore the appeal scheme fails to demonstrate that there would be adequate control and reduction of surface water run-off to ensure that it would be capable of being contained within the curtilage of the appeal site and that flood risk would not be increased elsewhere by the displacement of flood water.

Conclusion

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

Formal Decision

17. It is directed that the enforcement notice is varied in Schedule 4, step 1, by:
 - The deletion of the words "the attached External Lighting Proposal & Car Parking Layout plan"; and
 - The substitution of the words "approved drawing GLA-748-004 and the attached External Lighting Proposal & Car Parking Layout plan insofar as they are consistent. Any inconsistency between drawing GLA-748-004 and the attached External Lighting Proposal & Car Parking Layout plan shall be resolved by implementation of the details shown on the latter plan".
18. 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.

E Brownless

INSPECTOR