



Appeal Decision

Site visit made on 7 December 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 17th April 2023

Appeal Ref: APP/T5150/C/22/3298409

4 Chudleigh Road, London, NW6 7AH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Richard Selby against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 30 March 2022.
- The breach of planning control as alleged in the notice is failure to comply with condition No 6 imposed on planning permission ref 18/2507 granted on 11 /9/2018.
- The development to which the permission relates is the erection of a replacement dwelling and associated boundary and landscaping works.
- The condition in question is No 6 which states: *Further landscape details of areas so designated within the site (including the property frontage, fencing and paving as well as the rear garden) shall be submitted to and approved in writing by the Local Planning Authority prior to the construction of the new dwelling. The landscape works shall be completed in accordance with the approved details prior to occupation. Any planting that is part of the approved scheme that within a period of five years after completion is removed, dies or becomes seriously damaged or diseased, shall be replaced in the next planting season and all planting shall be replaced with others of a similar size and species and in the same positions, unless the Local Planning Authority first gives written consent to any variation.*
For the avoidance of doubt, this does not prohibit demolition of the existing dwelling but rather, the construction of the replacement property.
The Notice alleges that the condition has not been complied with as the development is occupied and the required scheme has not been submitted to and approved in writing by the Local Planning Authority, consequently no approved scheme can be implemented.
- The requirements of the notice are:
STEP 1 Cease occupation of the development until a landscape scheme has been submitted to and approved by the local planning authority and that scheme is implemented in full
STEP 2 Any trees and shrubs planted in accordance with the approved landscaping scheme which within 5 years of planting are removed, die, seriously damaged or become diseased, shall be replaced by trees and shrubs of similar species and size to those originally planted.
- The period for compliance with the notice is 9 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (the Act) 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. The appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, Condition No 6 attached to the planning permission dated 11 September 2018,

Ref 18/2507, granted by the Council of the London Borough of Brent is discharged and the condition below is imposed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for "demolition of existing dwellinghouse to accommodate a three storey dwelling including excavation of a basement level with rear light well and glass balustrading and habitable space in the loft with rear facing terrace, associated boundary and landscaping works to the front of the dwelling house" without complying with Condition 6 but subject to the other conditions attached to that permission and the following new condition:

1 a) To submit to the Local Planning Authority by 17 July 2023, a scheme of landscaping (to include the property frontage, fencing and paving as well as the rear garden) and a timetable for its implementation. The approved scheme shall be implemented in accordance with the timetable. If within three months of 17 July 2023, the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made and accepted as validly made by the Secretary of State. If an appeal is made, that appeal shall have been finally determined and the submitted scheme implemented in accordance with the approved timetable.

1 b) Any trees or shrubs planted in accordance with the approved landscaping scheme within a period of five years of planting which are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Preliminary Matters

2. The Council has served another notice in respect of an outbuilding within the appeal site which is the subject of an appeal¹ which will be addressed in a separate Decision Letter.

Background Matters

3. The Council alleges a breach of condition 6 of planning permission ref 18/2507 granted on the 11 September 2018 as described in the banner heading. The relevant planning permission provided for the demolition of the original dwelling and the construction of a replacement dwelling and associated boundary and landscaping works to the front. Condition 6 required further landscaping details to be submitted to include the rear in the form of a scheme for approval and completion. It also required the replanting of any damaged or destroyed plants within a 5 year period of completion.
4. The replacement dwelling was constructed and the Council subsequently approved a landscape scheme pursuant to condition 6 in December 2019. The appellant states that following the construction of a swimming pool in the rear garden, changes were made to the landscaping that existed at the time. The appellant bought the appeal site in September 2020 after the construction of the new dwelling and the swimming pool. The appellant subsequently carried out landscaping works including replacing clay with topsoil and adding mature planting around the edges of the garden and the outbuilding which I was able to see at my site visit. The appellant has also added a grassed area to the front of the appeal site since the Council's photographs were taken and there are also trees and hedging at the front.

¹ APP/T5150/C/22/3298411

5. Whilst the notice alleges that a landscaping scheme was not submitted, the Council accepts that a scheme was approved under reference 19/3754. However, the appellant has understood the crux of the allegation which is that the approved scheme was not implemented in full.

The appeal on ground (a)

6. Where an appeal on ground (a) is submitted in cases relating to a breach of condition, planning permission is sought to carry out the original development without complying with the particular condition enforced. However, I can also discharge the relevant condition and substitute any new conditions that may be required. The appellant is not asking for the condition to be discharged but for approval for what exists now in terms of landscaping.
7. The reason given for the condition in the original permission was "To ensure a satisfactory appearance and setting for the proposed development and to ensure that it enhances the visual amenity of the area." The Council's reason for issuing the notice refers to visual amenity but also refers to "little or no provision for soft landscaping and an excessive amount of hard surfacing increases risk of surface water flooding."
8. Whilst that assessment of landscaping appears to be based upon the Council's visit in August 2021 when the notice was issued in March 2022, a condition is required in the interests of visual amenity and I accept that the presence of soft landscaping can reduce the risk of surface water flooding. Whilst the appellant considers that works carried out are an improvement to the approved scheme, the Council has not assessed the works carried out at the appeal site and no detailed landscaping plan has been provided as part of this appeal.
9. The neighbouring occupier of No 3 Chudleigh Road supports compliance with a landscaping condition. He considers that limited soft landscaping has had a detrimental effect on natural water drainage and has provided photographs to support a flooding incident that occurred in his garden in October 2021. The appellant indicates that the flooding occurred as a result of mistakenly using a cosmetic drain to drain the pool cover. The occupier of No 3 states that land levels in the rear garden have been raised by 0.7 metres although the Council has not referred to an increase. Whilst the occupier of No 3 has installed new land drainage, the appellant's view is that the landscaping that exists now is an improvement upon what was approved including replacing clay with topsoil. In any event, imposing a new condition will enable the appellant to submit a new detailed scheme for the Council to assess.
10. The requirements of the notice provides for a new scheme to be submitted even though that part of the condition had been complied with. The approved scheme has not been implemented in full partially due to the presence of the swimming pool and also the outbuilding to the rear which is the subject of a separate notice. Discharging the existing condition but imposing a requirement for the submission of a new scheme with an implementation timetable as appropriate provides clarity.

Condition

11. The parties were given an opportunity to comment upon the proposed wording of the new condition. The new wording will allow a 3 month period for submission of a scheme and a further 3 months for the Council to assess that

scheme. There is therefore a clear timetable for compliance after an assessment of what is now proposed including the landscaping work has been carried out by the appellant.

12. The policy support for a landscaping condition is set out in the notice. Policy BT2 of the London Plan 2021 does link the two strands of visual amenity and the management of surface water together in requiring that off street parking provides adequate soft landscaping in the case of front garden 50% coverage) permeable surfaces, boundary treatments and other treatments to offset adverse visual impacts and increases in surface water run – off. The Brent Design Guide SPD1 refers to front gardens having a detailed garden design which includes planting and the Residential Extensions & Alterations SPD2 refers to a 50/50 balance between soft and hard landscaping for front gardens. The other policies referred to support either the management of surface water or the role of landscaping in preserving local character. A landscaping condition is therefore necessary for reasons of visual amenity and the management of surface water run-off.

Conclusion

13. For the reasons given above, I conclude that the appeal should succeed on ground (a) and the enforcement notice should be quashed. I shall discharge the condition which is the subject to the notice, and grant planning permission on the application deemed to have been made for the development previously permitted without complying with the condition enforced against but subject to a new condition as described above.

E Griffin

INSPECTOR