



Appeal Decision

Site visit made on 1 August 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2023

Appeal Ref: APP/Z4718/C/22/3308575

Land at Waverley House, Waverley Road, Huddersfield HD1 5NA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Tahir Sharif, Waverley Partners, against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 13 September 2022.
- The breach of planning control as alleged in the notice is Without the benefit of planning permission, the formation of hard-surface to the west of the building on the site.
- The requirements of the notice are a) Break up and permanently remove the hard-surface, including sub-base; b) Return the land to its condition prior to the development taking place, as shown edged red on "Appendix 1 – Previous Soft Landscaping Areas"
- The period for compliance with the requirements is: 1) step 5(a) – 60 days; 2) step 5(b) – 90 days.
- The appeal is made on the grounds set out in section 174(2)(b) and (e) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

1. The appellant failed to attend the scheduled accompanied site visit. However, I proceeded to make an unaccompanied visit and am satisfied that I was able to view the appeal site sufficiently to enable the appeal to be determined on the basis of the information before me.
2. A number of third party representations received in relation to this appeal have referred to the urgent need to provide additional car parking in the locality. However, in the absence of a ground (a) appeal, the merits of the development, including whether it might help alleviate any shortfall in parking provision and the question of the quality of the grassed area removed, are not before me for consideration.
3. The appellant states that when soil was removed from the site this revealed an existing sub-base layer. It suggests a case is being made that it would be excessive to require the removal of that sub-base layer. The appellant has also referred to the previous grassed area on the site growing on top of tarmac, where parking used to take place, suggesting they consider the requirement to return the land to a soft landscaping area to be excessive. I have dealt with these points later in my decision, as a 'hidden' appeal on ground (f).

The appeal on ground (e)

4. This ground of appeal is that copies of the enforcement notice were not served as required by s172 of the Act. This requires the notice to be served on the owner and the occupier of the land to which it relates and on any other person having a material interest in that land.
5. The appellant's case is that a copy of the notice was incorrectly served on Yorkshire Congregational Union (Incorporated) who are neither an owner or tenant. However, even if that organisation does not have a material interest in the land, there is no suggestion that the Council has failed to serve notice on any party that does have such an interest, and has therefore caused injustice as a result.
6. I am not therefore persuaded that the notice was incorrectly served. The appellant has been able to lodge their appeal and to argue their case fully during the course of the proceedings. The ground (e) appeal fails.

The appeal on ground (b)

7. The appeal is that the alleged development has not occurred as a matter of fact. Specifically, it is argued that no hard surface has been formed; that previously a hard surface including concrete and tarmac existed, with part of the site being covered by soil and grass. That material was, according to the appellant, removed to reveal a sub-base level. The appellant states that the material with which the site has been re-surfaced comprises crushed stone, which is additional sub-base material and is not hard surfacing; it has not been compacted in order to allow for drainage.
8. The appellant, supported by third parties, refers to the tarmac and concreted areas of the site being accessed from adjacent streets via longstanding gate openings. It is claimed that vehicles would park on these areas to deliver products or to collect waste materials.
9. The Council's case is that an area of soft landscaping has been removed and crushed stone laid in its place. This has resulted in the formation of a hard surface.
10. I have had regard to the aerial image attached as Appendix 1 to the notice. This appears to show the presence of a mature tree, a central grassed area and areas of hard surfacing adjoining the access points to the site at either end. I have no reason to doubt that this material has been removed.
11. From my visit it was apparent that the appeal site has been surfaced with material comprising a mixture of crushed stone and sand. It is being used as an informal car park at the side of Waverley House. The question is whether this material can reasonably be regarded as a hard surface. Though the material in question is not bonded, and did not appear to be well compacted, it is still of sufficient composition to provide and support a car parking function. In my judgment this distinguishes the surface material from a soft landscaping area, including topsoil, which would not generally be a suitable material to support car parking. It therefore seems reasonable to me that the crushed stone and sand surface is properly described as a hard surface.
12. I accept that hard surfacing was previously present on at least some of the appeal site, which has subsequently been removed. I also have no reason to

doubt that the parking of vehicles occurred on certain parts of the site for delivery and collection purposes. This, however, does not take away from the fact that, on the balance of probability, an engineering operation has been carried out replacing this hard surfacing (and the grass, soil and tree(s)) with the hard surfacing that is present on the site today. Therefore, the alleged development has occurred as a matter of fact and the ground (b) appeal fails.

The appeal on ground (f)

13. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The Act sets out that the breach may be remedied by making the development comply with the terms of any planning permission 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.
14. The requirements of the notice in this case focus on the latter objective. The recipient cannot be required to undertake works that would go beyond remedying the breach. No matter how the works are specified, the most that they can achieve is restoration of the land to its previous condition.
15. Therefore, the requirement to include the removal of 'sub-base' material would only include any such material laid in connection with the operation targeted by the notice. It would not include any such pre-existing, lawfully present material. It is likely that the landowner would have the best knowledge of what the previous condition was in this respect. Similarly, irrespective of the description as 'Previous Soft Landscaping Areas', and even if at some time in the past parking did take place within the area that was previously grassed, the actual requirement is to return the land to its condition prior to the development taking place. I note from aerial photographs provided, and the Council's site visit image taken in November 2020, that this appears to include a continuous area of well-established grass, on a large part of the appeal site, interspersed with a small number of trees.
16. However, notwithstanding these considerations, it has not been demonstrated that the requirements exceed what is necessary to achieve the purpose of the notice. The ground (f) appeal therefore fails.

Conclusion

17. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

18. The appeal is dismissed and the enforcement notice is upheld.

R Merrett

INSPECTOR