



Appeal Decisions

Site visit made on 15 August 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2023

Appeal A, Ref: APP/J1535/C/22/3293752

Appeal B, Ref: APP/J1535/C/22/3293753

Gardener's Arms, 103 York Hill, Loughton, Essex IG10 1RX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Ms Patricia Roberts (Appeal A) and Unique Pub Properties (Appeal B) against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice was issued on 25 January 2022.
 - The breach of planning control as alleged in the notice is without planning permission, levelling of the land, the laying of cobblestones in the pub garden that facilitates the increased use of the area resulting in the harm to neighbouring amenity.
 - The requirements of the notice are:
 1. Remove the cobblestones, return the land to its former levels and relay to turf from/in the area as shown cross hatched in black on the plan attached to the notice.
 2. Remove all the resulting debris/materials from the land.
 - The period for compliance with the requirements is four months.
 - Both appeals are proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act) and Appeal A is proceeding on ground (a) section 174(2) of the 1990 Act.
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by the deletion of the words in the allegation and their replacement with "Without planning permission, the laying of a new hard surface" and varied by deleting the requirements of step 1 and replacing it with "Remove the new hard surface."
2. Subject to these corrections and variations, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the laying of a new hard surface at the Gardener's Arms, 103 York Hill, Loughton, Essex IG10 1RX.

Appeal B

3. The appeal is dismissed.

Preamble

4. The Gardener's Arms is a public house situated within York Hill Conservation Area (YHCA). It is listed grade II and was originally a cottage that has been extended over time. The original cottage is still discernible and part of it comprises Ms Roberts' accommodation with a private garden to the rear. The

remainder of the cottage forms the public house. This has been extended to the rear to provide a kitchen with a beer cellar underneath, to the front to enlarge the bar area and to the side to provide toilets and a function room (the tearoom). The forecourt is used for outside drinking and is laid with tables and chairs and to the side of the tearoom there is a small car park.

The Notice, Preliminary and Procedural Matters

5. An enforcement notice must enable every person who receives a copy to know exactly what in the Council's view constitutes the breach of planning control. In this case the description of the development in the notice includes the words "that facilitates the increased use of the area resulting in the harm to neighbouring amenity." These words sum up the reason for issuing the notice rather than describing the breach of planning control. It is clear from the requirements of the notice and the evidence that the breach of planning control is operational development, namely the laying of a new hard surface. I shall therefore direct that the notice is corrected by deleting these words and to do so would not lead to prejudice.
6. I accept that the new hard surface resulted in an increase in activity to the rear of the public house. However, there is nothing before me to suggest that this area is a separate planning unit and, in that light, could be used for any purpose incidental to the public house use. Therefore, my deliberations will focus on the operational development.
7. The policies relied upon when the notice was issued have now been superseded following the adoption of the Epping Forest Local Plan 2011-2033 on 6 March 2023 (the LP). I have therefore had regard to LP Policies DM9 and DM21 in determining this appeal, copies of which were sent to the appellant.

The levelling of the land

8. The first part of the allegation is that the land was levelled. Whilst not raised as a separate ground of appeal at the outset, the appellants have nonetheless within their ground (c) appeals stated that the land was not levelled. This submission falls to be considered under ground (b), that the matter stated in the notice has not occurred as a matter of fact and the burden of proof is on the appellants to demonstrate this. There would be no injustice to the Council if I were to deal with this submission as they had an opportunity to comment on this point when responding to the ground (c) appeals.
9. The appellants submit that the land was never level and that it remains uneven today, as I saw at my site visit. There is an obvious slope downwards away from the rear of the tearoom towards the corner of the site. I saw a sub-base was laid below the top layer of block pavers (not cobblestones, as alleged) and this removed some but not all of the dips in the land. Looking at the finished surface in comparison to the lower portions of the building, the existing steps, the tree pits and the private garden used by Ms Roberts, it appears, on the balance of probabilities, that the land was not levelled.
10. The appellants submit a photograph of part of the land showing the rear elevation of the tearoom, which was taken at some point prior to the development of the new hard surface. It is apparent from this image, which shows bare earth overgrown with weeds, that in order to lay a new hard surface that this would have required some preparation works. Given the dips

that still exist across the land and the overall slope downwards, I find that the site was prepared but not levelled as a matter of fact and the ground (b) appeals succeed.

11. I shall therefore direct that the notice is further corrected by deleting the words "levelling of the land" from the allegation and varied to delete a requirement to relay turf, as it appears there was no turf prior to the works taking place. This is necessary before proceeding to determine the ground (c) appeals.

The ground (c) appeals

12. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. In this case the appellants accept that the new hard surface amounts to development requiring planning permission. They even submitted a planning application and a listed building application for the development (described as "provision of patio") in 2021.
13. The meaning of development is set out in section 55(1) of the 1990 Act and includes the carrying out of building, engineering, mining and other operations, in, on, over or under land. Section 55(1A) confirms that such operations include additions to buildings and other operations normally undertaken by a person carrying on business as a builder. Section 57 says that, subject to the provisions of the section, planning permission is required for the carrying out of any development of land.
14. Having regard to these provisions, I find that the laying of the new hard surface amounts to development for which planning permission is required. In some circumstances operational development can be 'permitted development' under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015. However, Schedule 2, Part 7, Class E does not permit the development of hard surfaces for business premises where that surface lies within the curtilage of a listed building, which is the case at the appeal site. The appeals under ground (c) therefore fail.

The ground (a) appeal and the deemed application

Main issues

15. The main issues are the effect of the development on the YHCA and the public house, a listed building, having regard to the statutory duties. These are to pay special attention to the desirability of preserving or enhancing the character or appearance of the YHCA and the desirability of preserving the listed building or its setting or any features of special architectural or historic interest.

Reasons

16. YHCA is on the edge of Loughton and borders Epping Forest. It is largely residential in character and comprises various styles of period dwellings in a range of plot sizes with some dwellings sited close to the pavement and others set well back. One of the significant features of the area is the topography with York Hill climbing steadily from Loughton towards the forest. At the junction of York Hill, Woodbury Hill and Pump hill, all narrow roads with intermittent pavements, there is an open grassed area (known as Grout's

- Corner) from which there are splendid views of London and Kent beyond. The Gardener's Arms faces onto Grout's Corner together with a cluster of cottages, which are also listed buildings, dating from the early 17th century.
17. The listing for the public house describes it as a late 17th century former cottage, timber framed, with weatherboarding and handmade red clay tiles. I saw the attached tearoom is also faced in weatherboarding but with a slate roof.
 18. The new hard surface is accessed from the corridor linking the tearoom to the bar area. Due to the significant change in levels from the front of the site to the rear, there are several steps leading from the corridor down onto the block pavers. The new hard surface has an irregular shape but essentially it flanks the garden of No 97 York Hill, abuts the end of the garden of No 10 Pump Hill and wraps around two sides of the public house kitchen extension. The hard surfaced space is enclosed by a high fence and is therefore only visible to users of the space though private views from first floor windows of part of the space may be possible from neighbouring properties.
 19. However, there are no public views of the hard surface from York Hill due to the high fencing enclosing the car park to the side of the tearoom. Similarly, public views are prevented from Pump Hill, due to intervening buildings and fencing.
 20. The block pavers are light in colour so whilst they form a pattern, the colour matches existing hard surfacing, which is concrete, around the rear of the building. As there are a variety of hard surfacing materials in the wider area including tarmac, concrete, flagstones and block pavers, with no one material more common than others, I am satisfied that the new block pavers are acceptable.
 21. Third parties have submitted that prior to the new hard surface the space was overgrown with vegetation, the loss of which harms the character and appearance of the YHCA. Other than the appellants' photograph showing the rear of the tearoom, I have not been provided with any other images to show the position before the works took place. However, at the site visit I saw there are two established trees in this space which are visible from Grout's Corner and from neighbouring gardens. Whilst the loss of alleged overgrown vegetation has resulted in a change to the area, the retention of the trees is a benefit. Overall, I find the character and appearance of the YHCA is preserved following the development of the new hard surface.
 22. The significance of the listed building is derived from its front and side elevations, all of which reveal a different aspect of its history. From Pump Hill the original cottage from which the Gardener's Arms is formed sits in front of but adjacent to three similar timber framed cottages, the oldest in the area, which are part of the setting of the public house. From York Hill the tearoom marks the beginning of the Gardener's Arms as a drinking establishment, providing refreshments to those leaving the forest and affording a view over London from a verandah (now removed), which used to overlook the space occupied by the new hard surfaced area. From Grout's Corner, all the different elements forming the public house are clearly visible and result in a pleasing composition together with the terrace to the right of the forecourt, which is enclosed by a distinctive curved high brick wall.

23. I find the new hard surface tucked away at the rear of the building does not affect any special architectural or historic features of the listed building. I also find that a private garden remains directly to the rear of Ms Robert's accommodation, which preserves the setting of this part of the listed building. Overall, the setting of the building has been improved by the new hard surfaced area. As such, I find no conflict with either Policy DM9, which requires a high quality of design or Policy DM21, which resists development that leads to unacceptable water contamination. The new hard surface is connected to a gully drain.
24. The appeal on ground (a) therefore succeeds and as the development is substantially complete, no conditions are necessary.
25. The appeals on grounds (f) and (g) do not now need to be considered.

Conclusions

26. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out namely the laying of a new hard surface at the Gardener's Arms, 103 York Hill, Loughton, Essex IG10 1RX referred to in the notice.
27. Appeal B is dismissed.

D Fleming

INSPECTOR