



Appeal Decision

Site visit made on 31 October 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 28 November 2023

Appeal Ref: APP/U5360/C/22/3304992

94 Manor Road, Hackney, London N16 5BN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Shalom Canzee against an enforcement notice issued by London Borough of Hackney.
- The notice was issued on 14 July 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the creation of a hardstanding to the front of the property.
- The requirements of the notice are to:
 1. Remove the hardstanding that has been created in the front garden as shown in appendix 1;
 2. Reinstate the planting, hedging and grass areas to what was previously in situ as shown in appendix 1;
 3. Make good all damage to the Property resulting from the removal of the unauthorised works; and
 4. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is: 1 (one) month.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act). Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Decision

1. It is directed that the notice is corrected by deleting requirement 2 and substituting it with:

"2. Reinstate the planting, hedging and grass areas to restore the land to its condition before the development took place."
2. Subject to the correction the appeal is dismissed and the enforcement notice is upheld.

Applications for costs

3. An application for costs was made by London Borough of Hackney against Mr Shalom Canzee. This is the subject of a separate decision.

Matters concerning the notice

4. Under s173(4)(a) of the 1990 Act, the purpose of remedying the breach of planning control may be achieved by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, discontinuing any use of the land, or,

as is the case here, restoring the land to its condition before the breach took place.

5. Step 2 requires planting, hedging and grass areas to be reinstated as shown in the aerial image provided in appendix 1 of the notice. The image is not dated and as there is no certainty as to whether this was the condition of the area before the breach took place, it is considered that reference to the aerial image should be removed from the requirement.

The appeal on ground (b)

6. An appeal on ground (b) is the matters alleged in the notice have not occurred. The onus is on the appellant to make out their case to the standard of the balance of probabilities. The appeal property is said to be a large house in multiple occupation (*sui generis*) and consequently does not benefit from permitted development rights granted by Article 3, Schedule 2, Part 1 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
7. The appellant claims that the area referred to in the notice was previously concreted and covered with flowerpots. In their grounds of appeal, they say that the work undertaken at the property was to replace the existing hardstanding. There is no appeal statement from the appellant and no evidence to support their claim.
8. An email dated 20 June 2022 from the Council to the appellant's agent following a visit that day sets out that although they considered the repair or renewal of hardstanding to be acceptable, subject to materials used, the creation of new hardstanding would require planning permission. I note the officer states that from what she has previously seen and from photographs, a large proportion of the property frontage was previously 'softscaped'.
9. Photographs dated 20 June 2022 supplied by the Council show works being undertaken within the area covered by the notice. They show the area covered by the notice is devoid of hardstanding and a large section is covered with what appears to be a plastic membrane. There is a mini digger on site. The photographs dated 4 October 2022 show that the works had been completed and the area had been covered with concrete. This concurs with my observations at the time of my site visit.
10. While the image in appendix 1 of the notice is an aerial view, it shows that the area was soft landscaped prior to the issuing of the notice. In the absence of any evidence to persuade me otherwise, I find that on the balance of probabilities, what was once an area of garden has been covered with hardstanding.
11. The appeal on ground (b) cannot therefore succeed.

The appeal on ground (f)

12. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and they are to remedy the breach of planning control (S173(4)(a)) or to remedy injury to amenity (S173(4)(b)). In this case the Council require the removal of the hardstanding area to the front

of the property and reinstatement of the garden. The purpose of the notice is therefore to remedy a breach of planning control.

13. In making an appeal on ground (f), the onus is on the appellant to specify any lesser steps that would remedy the breach of planning control. The grounds and facts in the appeal form provide that flowerpots could be added to the area with hedges, and that drainage could be accommodated between the end of the garden and the pavement to resolve the issue concerning surface water run-off. Firstly, placing flowerpots on the area and planting a hedge are not forms of development as defined by section 55 of the 1990 Act and as such, these could be undertaken by the appellant in any case.
14. While drainage solutions may assist with surface water run-off which is likely to occur from an area that has been covered with an impermeable surface, there are no details to show what drainage is proposed and how it could improve the matter.
15. Notwithstanding this, the Council issued the notice to remedy the breach of planning control. Since the deemed planning application has lapsed, it is not appropriate to consider the planning merits and lesser requirements than the removal of the hardstanding. This is because of the provisions of section 173(11) of the 1990 Act. Such a course would be in effect to grant planning permission for any structure or operation not required to be removed without the prescribed fees having been paid.
16. The notice, as issued, requires the removal of the hardstanding to the front of the property, replanting, making good any damage to the property and removing any debris resulting from the works. Having regard to the reasons for issuing the notice, the requirements do no more than simply remedy the breach that has occurred.
17. The ground (f) appeal therefore fails.

S A Hanson

INSPECTOR