



Appeal Decision

Site visit made on 6 November 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2023

Appeal Ref: APP/M5450/C/23/3321873

36 Roxborough Park, Harrow HA1 3AY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Fengyang Xu against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The notice was issued on 11 April 2023.
 - The breach of planning control as alleged in the notice is without planning permission:
 - 3.1 The construction of hard surfacing on the forecourt of the dwellinghouse in a conservation area. ("Unauthorised Hardstanding")
 - 3.2 The installation of a black gate fitted at the northern elevation of the dwellinghouse in a conservation area ("Unauthorised Gate")("Unauthorised Development")
 - The requirements of the notice are to:
 - 5.1 Remove the Unauthorised Hardsurfacing and reinstate soft landscaping.
 - 5.2 Remove the Unauthorised Gate positioned at the northern elevation and reinstate pre-existing boundary treatment.
 - 5.3 Remove from the Land all materials and debris arising from compliance with the aforementioned requirement of the notice.
 - The period for compliance with the requirements is: Three (3) calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) 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.
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Decision

1. It is directed that the enforcement notice is varied by:
 - At paragraph 5.1, the insertion of the words 'which has been removed to facilitate the Unauthorised Development', so that it reads 'Remove the Unauthorised Hardsurfacing and reinstate soft landscaping which has been removed to facilitate the Unauthorised Development'.
 - At paragraph 5.2, the deletion of the words 'and reinstate pre-existing boundary treatment' and the insertion of the words 'OR reduce the height of the Unauthorised Gate to no more than 2 metres above ground level.', so that it reads 'Remove the Unauthorised Gate positioned at the northern elevation OR reduce the height of the Unauthorised Gate to no more than 2 metres above ground level.'
2. Subject to the variations above, 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.

Ground (c)

3. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. In an appeal under ground (c), the burden of proof¹ is firmly on the appellant. The main thrust of the appellant's case under ground (c) is that the gate and hard surfacing are permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO).
4. Schedule 2, Part 2, Class A permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Development is not permitted by Class A if the height of the gate would exceed 2 metres above ground level. The appellant suggests that the substantial parts of the gate are 1.8m high, with parts of the decorative framework only marginally exceeding 2m. However, I do not consider the exceedance to be marginal. Furthermore, since permitted development rights only apply when the development fully accords with the limitations set out in the GPDO, there cannot be any, even a '*de minimis*' infringement of that requirement. Since the gate exceeds 2m in height, planning permission is not granted by the GPDO.
5. Schedule 2, Part 1, Class F permits hard surfaces incidental to the enjoyment of a dwellinghouse. Development is permitted by Class F subject to the condition that where the hard surface would be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway and the area of ground covered by the hard surface would exceed 5 square metres, either the hard surface is made of porous materials, or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.
6. The hard surfacing has been constructed of paving blocks, with a channel drain between the appeal site and the pavement. While the appellant may believe that the hard surfacing is constructed of a porous material, I have no substantive evidence to show that this is the case. The porosity of block paving will depend, in part, upon the permeability of the subbase which is used. The appellant has provided me with a photograph of the site prior to the installation of the paving blocks. While it is not possible to determine from the photograph the type of subbase which has been used, it appears finely compacted and so is unlikely to allow water to soak in.
7. It has not been shown that the hard surfacing is made of porous materials or that it would comply with the conditions and limitations of the GPDO. The appellant states they are willing to reinforce its permeability with a drainage channel, however, the GPDO does not grant retrospective planning permission. Consequently, permission is not granted by the GPDO.
8. Thus, for the reasons given above, the gate and hard surfacing are not permitted by the GPDO and express planning permission is required. The appeal under ground (c) must therefore fail.

Ground (a)

9. An appeal under ground (a) is made on the basis 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.

¹ On the balance of probabilities.

Main Issue

10. The main issue is the effect of the appeal scheme on the character and appearance of the local area, having regard to the setting of the nearby Locally Listed Buildings and bearing in mind the extent to which it would preserve or enhance the character or appearance of the Roxborough Park and The Grove Conservation Area.

Reasons

11. The appeal site is located within the Roxborough Park and The Grove Conservation Area (RPGCA), which is characterised by its undulating topography, and unusually permeable pedestrian plan form. From the evidence before me and my site visit, I consider the significance of the RPGCA is derived from the verdant character of the area, the historic layout of development and the use of traditional, high quality building materials.
12. There are a number of locally listed buildings within the RPGCA, including Nos 21 to 35 (odd) Roxborough Park, which are located on the opposite side of the highway to the appeal site, and which form a group of similarly designed semi-detached properties constructed of yellow stocks with red dressings and decorative moulded cornices. Although the appeal site is on the other side of the highway to the locally listed buildings, due to their close proximity, in my view it forms part of the setting of this group of buildings.
13. Policy HC1 of the London Plan (2021), policy CS1 of the Harrow Core Strategy (2012)(the HCS) and policy DM7 of the Development Management Policies (2013)(the DMP) all seek to ensure that development proposals affecting heritage assets, and their settings, conserve their significance and avoid harm. Policy DM1 of the DMP seeks a high standard of design and states that proposals which are detrimental to local character and appearance will be resisted.
14. The enforcement notice refers to the Harrow on the Hill Village Conservation Area Appraisal and Management Strategy. The Roxborough Park and the Grove Conservation Area Appraisal and Management Strategy (CAAMS) was adopted in May 2008 as part of appendix 4 to the Harrow on the Hill Conservation Areas SPD. The appellant has been provided with a copy of the document through the appeal and I am satisfied they have had the opportunity to comment on its implications for the appeal scheme.
15. The CAAMS advises that public and private greenery contributes greatly to the area's appearance, softening the street scene and providing an attractive setting for the architecture of the area. The Locally Listed Buildings Supplementary Planning Document (2013)(SPD) also advises that historic boundary treatments and surfacing contribute to the setting and to the wider landscape and should, where appropriate be preserved.
16. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the RPGCA. Furthermore, paragraph 199 of the National Planning Policy Framework (September 2023)(the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

17. In respect of the locally listed buildings, paragraph 203 of the Framework advises the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. It goes on to advise that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
18. The appeal building comprises an attractive two-storey semi-detached Victorian property, which fronts onto Roxborough Park. An aerial photograph, dated 2005, provided by the appellant shows what appears to be a verdant frontage, with mature vegetation. Vegetation within the frontage of the site would have made a significant positive contribution to the RPGCA. The installation of hard surfacing has significantly diminished the verdant character of this part of the RPGCA and harms the setting of the nearby locally listed buildings. Requiring a drainage channel to be installed would not address this harm.
19. The ornate black gate with gold detailing appears at odds with the traditional design features of the main dwelling and despite its recessed position, draws the eye when travelling along Roxborough Park. The appellant suggests requiring that the gate is painted black and retained thereafter. However, the elaborate design of the gate would still be at odds with the traditional design of the main dwelling, which is harmful to the RPGCA and the setting of the nearby locally listed buildings. Although gates are used elsewhere in the RPGCA, these are generally constructed of traditional materials, such as wood.
20. Thus, the appeal scheme harms the character and appearance of the area and the setting of the nearby locally listed buildings and fails to preserve the character or appearance of the RPGCA, contrary to policy HC1 of the LP, policy CS1 of the HCS and policies DM1 and DM7 of the DMP, and also fails to comply with the CAAMS and the SPD, the requirements of which are set out above.
21. Paragraph 189 of the Framework states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance. Although the gate is set back from the main road, it is clearly visible when viewed from Roxborough Park. Given the limited size of the gate and hard surfacing relative to the RPGCA as a whole, I consider the harm to be less than substantial harm to the significance of the RPGCA.
22. Paragraph 202 of the Framework advises that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use. The appellant has not advanced any public benefits of the appeal scheme. Although the hard surfacing facilitates off-road parking, the appeal scheme is not the only means of securing off-road parking. Such a benefit does not, therefore, outweigh the harm to the RPGCA, the conservation of which I attribute great weight to.

Other Matters

23. The Council has referred to Historic England Making Changes to Heritage Assets Historic England Advice Note 2 and Historic England The Setting of Heritage Assets Historic Environment Good Practice Advice in Planning Note 3 (Second Edition), which both provide advice on works to heritage assets. These documents do not constitute policy and so are not determinative in my consideration of this appeal.

24. The Council referred to policy DM42 of the DMP which sets out standards for proposals that make on-site provision for parking. However, while the hard surfacing facilitates the off-road parking of vehicles, the Council has taken enforcement action on the basis of its effect on the RPGCA and nearby locally listed buildings, not parking standards. This policy is therefore not determinative in terms of the appeal before me.

Ground (a) conclusion

25. Thus, for the reasons given above, I find the appeal scheme conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

26. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
27. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms of any planning permission, by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. It is clear from the wording of the notice, that its purpose is to remedy the breach.

The gate

28. The appellant suggests that the requirement to remove the gate and reinstate the boundary treatment is not sufficiently precise. Although section 173(5) of the Act makes it clear that an enforcement notice can require the carrying out of any building or other operations, it is not clear from the evidence what boundary treatment the Council is seeking is reinstated.
29. The gate which has been erected does not form part of the boundary between the appeal site and the neighbouring property but delineates the front of the property from the rear. As a consequence, I consider requiring the reinstatement of a boundary treatment would be excessive. I shall therefore delete this from the requirement.
30. Although there are a number of Article 4 directions relating to the RPGCA, from the evidence provided by the Council, it seems these do not apply to the appeal site. Part 2, Class A of Schedule 2 of the GPDO permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Development is not permitted by Class A if (a) the height of any gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level.
31. While the GPDO does not grant retrospective planning permission, requiring complete removal of the gate is unlikely to achieve anything and is therefore excessive, because the grant of planning permission under the GPDO represents a realistic fallback position and is an obvious alternative that could be achieved with less cost and disruption.

32. The appellant suggests the requirement could read "remove the upper decorative framework of each gate and ensure that no part of the gate exceeds 2m in height from the finished floor level." However, to accord with the wording of the GPDO and to ensure that the requirement is not overly restrictive, I consider the requirement should be varied to give the appellant the option to 'reduce the height of the gate to no more than 2 metres above ground level.'

The hard surfacing

33. The notice requires the appellant to remove the hard surfacing which has been installed. There is no ambiguity in this regard. However, I find 'reinstate soft landscaping' to be ambiguous. The notice can do no more than require the reinstatement of soft landscaping which has been removed to facilitate the unauthorised development. In the interests of clarity, I shall therefore vary the requirement to make it clear it is the soft landscaping which has been removed to facilitate the unauthorised development, which is to be reinstated.
34. The appellant suggests that the requirement is unduly onerous as the installation of a drainage mechanism to the front boundary and the associated alterations to the hardstanding would constitute permitted development. However, the GPDO does not grant retrospective planning permission. Whilst planning permission granted by the GPDO can represent a realistic fallback, I do not know what such a scheme would look like.
35. Although the appellant has suggested wording: "remove a 0.5m wide strip of hardstanding along the front boundary of the property (excluding a maximum 4m wide vehicular access point and 1m wide pedestrian access point) and replace the removed area with soft landscaping to allow the planting of a hedge and to install a drainage channel within the hard surface along the front edge of the site so as to direct run-off water from the hard surface to the permeable soft landscaped area", I find it is not sufficiently precise and so the appellant would not know what they had to do.
36. Thus, for the reasons given above, the appeal under ground (f) succeeds in part and I shall vary the notice accordingly.

Conclusion

37. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeal on ground (f) succeeds to that extent.

M Savage

INSPECTOR