



Appeal Decision

Site visit made on 12 December 2023

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Appeal Ref: APP/A5270/C/22/3313239

94 Corringway, Ealing, London W5 3HA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr. Mohammed Alzarrad against an enforcement notice issued by London Borough of Ealing.
- The notice, numbered 19EN0742(1), was issued on 7 November 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of front sliding gates, front boundary wall with railings above and the laying of hardstanding in the front garden ("The Unauthorised Developments").
- The requirements of the notice are to:
 1. Remove the sliding gates.
 2. Remove the front boundary wall with railings above.
 3. Remove the hardstanding in the front garden; and
 4. Remove all resultant debris.
- The period for compliance with the requirements is:
Two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice is varied by:

- At Section 5 of the notice, the deletion of the words:

'You are required to complete these actions within two months from the date this notice takes effect.'

And their replacement with the words:

'You are required to complete these actions within four months from the date this notice takes effect.'

2. Subject to the variation, 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.

Preliminary Matters

3. The appeal is made only on grounds (a) and (g). It is agreed between the main parties however that there had been an area of hardstanding present at the front of the appeal property prior to the laying of the current two-tone grey pavers. There is also no dispute that the area of hardstanding which the notice seeks to attack has been carried out within the timeframe set out by both parties and within the last four years as the notice alleges.

4. Nevertheless, the appellant has claimed that the notice is defective as it 'could not reasonably require' the removal of the hardstanding as the hardstanding had been present as far ago as 2005. The appellant therefore essentially makes a 'hidden' ground (d) case that at the date at which the notice was issued no enforcement action could be taken by reason of the passage of time¹ (with regard to the hardstanding).
5. However, whilst neither the appellant nor the Council have provided compelling or consistent detail of the extent of the previous area of hardstanding, when it was laid or the length of time that it was present prior to its replacement with the current paving, it is not disputed that the hardstanding attacked by the notice was substantially completed within the last four years². From the available evidence, it seems to me that the current area of hardstanding is more extensive than that which previously existed, and that it appears to be a one single entity. I am not therefore persuaded, on the balance of probability, that what the notice seeks to attack is the same as the hardstanding that previously existed. As it has been agreed that the current hardstanding has been laid within the relevant time period, the hidden ground (d) appeal is therefore destined to fail.
6. Reference is also made to the limitations of the Article 4 Direction (the Direction) in force within the Hanger Hill (Haymills) Estate Conservation Area (CA)³. Whilst placing a number of restrictions on the exercising of permitted development rights, the Direction does not place restrictions on permitted development rights for the erection of means of enclosure. Whilst it has not been suggested that the sliding gates and wall and railings benefit from permitted development rights, the appellant does suggest that it remains open to him to erect other means of enclosure within those permitted development limits. I will consider that possibility as part of the appeal under ground (a) in considering whether planning permission may be granted 'in relation to the whole or any part of those matters to which the notice relates' under the application deemed to have been made under ground (a).
7. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. With the exception of paragraph numbering, the parts of the Framework most relevant to this appeal have not substantively changed from the previous iteration and, consequently, it has not been necessary for me to seek the further comments of the main parties in this respect. I have determined the appeal on ground (a) accordingly.

The appeal on ground (a)

Main Issue

8. The main issue is the effect of the development upon the character and appearance of the Hanger Hill (Haymills) Estate Conservation Area.

¹ Paragraph 5.3 – MZA Planning 'Full Statement of Case..' (Ref: YM/Alzarrad/1122/ch)

² Section 171(B)(1) – Town and Country Planning Act (1990) (as amended)

³ Initially made on 25 September 1997 and extended on 14 April 2011

Reasons

9. The CA is described in the CA's Character Appraisal⁴ (the CACA) as a '*neat semi-circle consisting of four roads*', of which Corringway is one. The CA is split into two sub-areas, with the appeal site lying within sub-area 2, the predominantly residential estate. Despite being developed at the same time, the CA and sub-area 2 displays '*a very diverse architectural character*' with differing house styles, designs and types, albeit that large garden plots, trees and hedges contribute to its leafy and open suburban residential setting.
10. The CACA notes that the original garden frontages for most houses in the estate consisted of a low brick wall and a hedge with a timber or metal gate. Part of the estate's character is derived from the enclosed and planned front gardens. The laying of hardstanding over significant proportions, or the entirety, of frontages is recognised as posing a threat to the estate's character and appearance⁵. It also goes on to note that the loss of garden walls, or replacement with later walls of differing materials or designs also constitute a threat to the area's character.
11. Whilst the height of the front wall is broadly in keeping with the prevailing heights typically found in the surrounding area, its appearance is not. Finished in thin, dark grey / black slips with flat grey coping, the wall is incongruously at odds with the prevailing style, colouring, appearance and materials of front garden walls, which are typically constructed of red brick. The result is a feature intrusive within its Corringway setting and with a harmful effect on the character and appearance of the host building and surrounding area.
12. Whilst I accept that there are photographs of a previous front boundary wall at the appeal property, apparently faced in a buff-coloured material, and that I have been directed towards other similar examples, I am not persuaded that they provide the necessary justification for what has been built. The dark colouring of the wall in this instance, and the thin 'slips' used in its construction are unnecessarily stark and incongruous and go harmfully beyond the broadly consistent palette and styles exhibited across the CA. Any variations found are instead the exceptions that prove the rule.
13. This incongruity is further compounded by the presence of the decorative metal railings atop the wall, the metal sliding gates and the metal gate posts. Such means of enclosure are atypical of Corringway properties and the wider CA. Elsewhere, low brick walls are supplemented by hedging, shrubs and trees and whilst the appeal property benefits from the well-tended hedges marking the boundaries with properties on either side of it, the 'rise-and-fall' design of the railings, which is replicated on the sliding gates is an alien and incongruous feature. Further, the lighter grey detailing on the railings further draws the eye to the railings and, in turn, the wall upon which they are mounted. As a continuation in style and colour, the sliding gates exhibit the same harmful characteristics.
14. Again, the appellant has drawn my attention to other nearby examples of metal railings installed above low front boundary walls. I have not however been provided with any further details of those examples, including their exact

⁴ Hanger Hill (Haymills) Estate Conservation Area Character Appraisal – March 2008

⁵ At paragraphs 5.4(4) & 5.6 (p18 & 19) of the Hanger Hill (Haymills) Estate Conservation Area Management Plan

locations or planning status. Whilst I was able to see a number of such examples on my visit to the appeal property and surrounding area, they were limited and served more to underline the broad similarities of boundary enclosures across the CA rather than justify the type of overtly decorative railings as installed in this instance.

15. The area of land at the front of the appeal property between the pavement frontage and the dwelling itself is almost entirely paved with two-tone grey pavers. The exceptions are a small, semi-circular raised planter positioned between the two entrance gates, a small quadrant 'bed' adjacent to the dwelling's front elevation and the boundary hedge between the appeal property and 96 Corringway. Strips of artificial 'grass' matting have been laid along both sides and immediately to the front of the house loosely on top of the area of hardstanding, presumably to create the impression of some sort of relief from the extent of the hardstanding, but no more than a cursory glance is sufficient to recognise the true nature of the 'green' elements of the frontage.
16. As with the boundary wall, my attention has been drawn to photographs showing a previous iteration of the hardstanding and driveway at the appeal property. There is no dispute that an area of hardstanding previously existed. However, what has now been laid, and that which the notice seeks to attack, is more extensive and more incongruously strident in its appearance and pattern. Indeed, the appearance of the two-tone colouring of the hardstanding and the extent over which it has been laid is particularly intrusive within the context of the more muted and discrete palette of materials seen across the CA.
17. There are, I accept, some similarities in colour between the appeal scheme's pavers and those used on pavements within the public realm, particularly close to the appeal site. My attention has also been drawn by the appellant to the CACA⁶ which identifies the materials used for, and the poor condition and appearance of, pavements in the general context of the CA's fabric. However, the mix of paving slab types, and the use of asphalt, here merely underline the CACA's assessment of the harm caused to the character and appearance of the CA by inappropriate materials. A limited similarity between the colour of the pavers and pavement paving slabs does not justify the visually disruptive impact of the appeal scheme's paving, whilst the physical extent of the hardstanding unacceptably alters the balance within property frontages between hard surface and opportunities for soft landscaping. Thus, whilst the semi-circular raised planter at the front is welcomed, the strips of artificial 'grass' are, in themselves, incongruous and do nothing in terms of 'softening' the appearance of the hardstanding or reflect in any way the prevailing character of property frontages within the CA.
18. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. As the proposal would neither preserve nor enhance the character or appearance of the CA harm arises from the appeal scheme, albeit that that harm is less than substantial. The Framework states that in such instances this harm should be weighed against the public benefits of the development.

⁶ Section 5.7 of the CACA, as highlighted in the appellant's Final Comments (MZA Planning, 28 March 2023)

19. In this instance, the appellant has identified a range of predominantly private, rather than public, benefits arising from the appeal scheme, such as the scheme's ability to provide off-street parking for up to four vehicles, and the greater security that the gates and wall / railings offer as a deterrent to crime. Whilst there may be a very small element of public benefit to removing on-street car parking and collectively in attempts to discourage crime and anti-social behaviour, I am not persuaded that any such public benefits are any more than very limited, and that they are instead principally private benefits.
20. Taken in isolation, the materials used may well be of a high quality and specification, and the hard standing incorporate a drainage channel to assist in the management of surface water runoff. However, for the reasons set out above, I do not consider the scheme's materials to be appropriate to the setting, context and location in which they have been employed at the appeal property, whilst the management of surface water is a neutral factor that weighs neither in support of nor against the proposal in the context of the harm I have identified.
21. Nor is it clear exactly what the appellant means when it is said that the development makes 'highly efficient use of the space available', unless it can be taken as meaning that almost all of the available space at the front of the property is laid to hardstanding. This however is a key contributory factor in the harm that I have identified.
22. Thus, for the reasons I have set out, the appeal scheme fails to preserve or enhance the character or appearance of the CA, and there are insufficient public benefits arising to outweigh the less than substantial harm that I have identified. The appeal scheme is therefore contrary to Policies 7.4, 7B and 7C of Ealing's 'Development Management Development Plan Document' (2013) and Policies D3 and HC1 of the London Plan (2021) and the Framework. Together, these seek to ensure high quality development that enhances, respects and responds to local character and context whilst retaining and enhancing characteristic features of Conservation Areas and recognises the harm that may arise from incremental changes.
23. I am conscious that the notice's requirements do not seek the reinstatement of either an area of hardstanding or a means of front boundary enclosure. As the appellant correctly identifies, the CACA and the accompanying 'Management Plan' recognise the threat posed by the loss of boundary walls and the loss of front gardens to car parking. However, I am also mindful that both also recognise the threat to the CA's character or appearance from the inappropriate replacement of means of boundary enclosure and the laying of extensive hard surfaces over front gardens, and the use of inappropriate materials in so doing. The harm that I have found in these respects is immediate and current and I am not persuaded that the possibility of some unspecified future harm should outweigh the resolution that the notice sets out.
24. Reference has been made to the possibility of permitted development rights for the construction of a front boundary wall, gates or other means of enclosure. However, I have no further details of what it is that the appellant might propose in such circumstances and, as such, such a vague and unsubstantiated risk is not sufficient to justify the retention of the wall, gates and railings and the resulting harm to the character or appearance of the CA.

25. The patchy nature of the appeal property's planning history is unfortunate. However, as neither party has been able to fill in the gaps or provide documentation in lieu of the absent archive material, the weight that I can give such matters is limited. I have therefore determined the appeal on the basis of the evidence before me as it relates to the matters alleged in the notice.
26. It is almost inevitable that there will be a range of examples that both parties in an appeal will draw upon in an effort to support their particular argument, or to counter those of the other party. Often, such examples are provided without full background and detail. In this particular example, I spent considerable time during my visit to the site walking surrounding streets to better appreciate the CA's character and appearance, and the range of garden and boundary treatments present. However, for the reasons set out above, I find the appeal scheme to be unacceptable, and contrary to the provisions of the development plan and the Framework as set out above. As the planning history and details of the examples cited are unclear, the weight that I can afford them is limited and insufficient to outweigh the harm that I have identified in this instance.

Conclusion on the appeal under ground (a)

27. For the reasons set out, and having considered all other matters raised, I conclude that the appeal under ground (a) should not succeed.

The appeal on ground (g)

28. A period of four months is sought by the appellant within which to carry out the works required by the notice, the period of two months as set out in the notice stated as being too short a period within which to procure the relevant trades and contractors.
29. I am sympathetic to this argument, given the extensive area of hardstanding that has been laid, the fact that the main entrance to the property is taken across this area of land and the general logistical issues involved in carrying out disruptive works whilst maintaining access to a residential property on a day-to-day basis. I agree that a longer period of time would not be unreasonable, and that the four months sought would provide an appropriate balance between allowing the necessary arrangements to be put in place without unduly perpetuating further harm or delay. Thus, the appeal under ground (g) succeeds and I shall vary the notice accordingly.

Other Matters

A hidden appeal on ground (f)

30. No appeal under ground (f) has been brought. However, the appellant has nevertheless sought to argue that the previous presence of an area of hardstanding, the absence of detail regarding previous forms of hardstanding and means of enclosure and the lack of detail in the notice about reinstatement lend weight to the argument that the steps required by the notice exceed what is necessary to remedy the breach of planning control.
31. In this case, the notice requires the removal of the sliding gates, front boundary wall and railings and the hardstanding in their entirety. This is consistent with the purpose of remedying the breach of planning control in accordance with (s173(4)(a)), the breach being comprised of the works in their entirety. Given that the purpose of the notice is to remedy the breach of

planning control, in the absence of planning permission this can only therefore be achieved by the removal of the unauthorised development. To require this does not, therefore, exceed what is necessary and the appeal on this ground must fail.

Conclusion

32. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

G Robbie

INSPECTOR