



Appeal Decisions

Site visit made on 12 December 2023

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

an Inspector appointed by the Secretary of State

Decision date: 26 February 2024

Appeal A Ref: APP/A5270/C/23/3314814

Appeal B Ref: APP/A5270/C/23/3314815

6 Ashbourne Road, Ealing, London W5 3ED

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- Appeal A is made by Mr Avneet Chowdhury and Appeal B is made by Mrs Sonia Chowdhury against an enforcement notice issued by London Borough of Ealing.
- The notice, numbered 22EN0486(1), was issued on 5 December 2022.
- The breach of planning control as alleged in the notice is without planning permission, the laying of hardstanding in the front garden.
- The requirements of the notice are to:
 - a) Remove the hardstanding in the front garden; and
 - b) Remove all resultant debris.
- The period for compliance with the requirements is:
Two months.
- The appeals are proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since the appeals have been brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decisions

Formal Decisions

1. The appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. The appeals proceed on grounds (a) and (f), but the appellants have also sought to distinguish between the provision of hardstanding and the replacement of hardstanding, as a means of constructing a case under hidden ground (c) appeals. The basis for this seems to rely upon changes in the wording of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) (unless otherwise stated, the 2015 Order) between the 1995 version of the Order¹ as it then existed when the Article 4 Direction was made in 1997² and the current iteration of the Order.
3. In essence, the appellants' argument is that as the Direction refers only to the provision of hard standing (and not replacement) the Direction's restrictions do not apply to the replacement³ of hard surface, which is part of the current 2015

¹ The Town and Country Planning (General Permitted Development) Order 1995 (SI: 1995 No. 418)

² Article Four Direction: The Council of the London Borough of Ealing – The Hanger Hill (Haymills) Estate Conservation Area Direction under Article 4(2) of the General Development Order 1988 – 25 September 1997

³ F. Permitted development: Development consisting of (a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or (b) the replacement in whole or in part of such a surface.

Order, but not part of the 1995 Order. Thus, it is argued, the areas of the current hardstanding that coincide with those areas where hardstanding previously existed, are in fact permitted development and that the notice and its requirements cannot apply to these areas. Rather, it can only apply to those parts of the garden not previously consisting of hard surfaces.

4. This approach is, however, flawed. Even if I were to agree with the appellants' argument regarding the implications of differences in the wording of the respective Orders (1995 and 2015), the alleged works go beyond the replacement of the areas where there was previously hardstanding. It is clear to me from all that I have seen and read that the current hardstanding is, as a matter of fact and degree, an entirely new hard surface, and one that is larger and more extensive than the previous areas. As such, it amounts in its entirety to a new hardstanding and is therefore the '*provision*' of an area of hardstanding for the purposes of Class F, Part 1, Schedule 2 of the Order, not '*replacement*'. Thus, I am not persuaded, on the balance of probabilities, that the appellants have adequately demonstrated that there has not been a breach of planning control in relation to parts of the hardstanding in question. The appeals on hidden ground (c) fail as a consequence.
5. The appellants' grounds of appeal and final comments also make reference to the prior presence of these areas of hardstanding in support of the appeal under ground (f). However, the implication of the appellants' reference to these areas also amounts to a hidden ground (d) appeal in that at the time the notice was issued, no enforcement action could be taken in respect of the breach by reason of the passage of time. It is clear however, and there is no dispute, that notwithstanding the previous presence of such areas, the alleged breach of planning control attacked by the notice has taken place within the last four years. As a complete entity carried out within that period, the hidden ground (d) appeals also fail. I consider the appeal under ground (f) separately, below.
6. 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 appeals on ground (a) accordingly.
7. I am satisfied that from the evidence before me, the date of issue of the notice is 5 December 2022, as set out on the notice itself and not 5 November 2022 as erroneously indicated on the appellants' appeal form. I have determined the appeals accordingly.

The appeals on ground (a)

Main Issue

8. The main issue in respect of both appeals is whether the development preserves or enhances the character or appearance of the Hanger Hill (Haymills) Estate Conservation Area (the CA).

Reasons

9. The CA is described in the CA's Character Appraisal (2008) (the CACA) as a 'neat semi-circle consisting of four roads', of which Ashbourne Road is one. The

CA is, the CACA explains, notable for its mix of architectural styles, as well as for the overall quality of house design and landscaping.

10. 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 display '*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. 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 appearance. The CACA notes at paragraph 5.5 a number of threats to the special character of the CA and section 7 sets out a summary of issues which include the loss of front gardens and the creation of additional car parking within front garden plots.
11. There is no dispute that some of the current area of hardstanding at the appeal property has been laid where previously there was none. Historic photographs referred to by both parties show a single-width driveway that led towards an integral garage, with a separate path towards the front door and another that led to a gated access to the appeal property's rear garden, between 4 and 6 Ashbourne Road. Although seemingly left in a poorly maintained condition and appearance for a considerable period of time, this layout also previously incorporated a central grassed area and separate overgrown borders.
12. What has been constructed, and the notice seeks to attack, is a large and largely unrelieved area of hardstanding, laid to brick pavers in a herringbone pattern. Other than a narrow, raised planter immediately adjacent to a low boundary wall between Nos 4 and 6 which provides some limited opportunities for soft landscaping, the dark grey paving area is extensive, visually harsh and harmfully incongruous against the softer tones of brickwork of neighbouring property's driveways, walls and buildings.
13. An area of artificial grass 'carpet' adjacent to the front garden wall, seeks to create the impression of a small area of lawn to break up the area hardstanding. It is however just laid incongruously on top of the brick pavers and is notable for its artifice. The appellants' offer of extending this 'carpet' would make little difference visually and would do nothing to address the harmful effects of such an extensive area of hardstanding.
14. Whilst I accept that the CACA and its accompanying Management Plan (2008) is not prescriptive as to colour or exact materials for areas of hardstanding within the CA, it is clear as to the threat that the laying of such areas can have to the character and appearance of the CA. In this instance, the paving as laid is unsubtly harsh against the predominantly softer tones of materials employed on neighbouring properties and elsewhere across the CA.
15. I accept too that the guidance within the CA Management Plan⁴ states that brick pavers are preferred to plain concrete or tarmac and note the appellants' further justification that the pavers match the colour of the paving slabs employed within the public footway. However, what I saw of the public footway

⁴ At paragraph 5.6 of the Hanger Hill (Haymills) Estate Conservation Area Management Plan - incorrectly referred to by the appellant at Final Comments stage as being within the Conservatory Area Character Appraisal

materials was a mish-mash of paving slab types and asphalt and which do not provide adequate justification for the extent of hardstanding or choice of materials for the appeal scheme.

16. There are other examples of extensive areas of hardstanding at the fronts of properties within the CA. The planning status of these will, I accept, vary from case to case and some will no doubt have permission, others not, and others still will have been in place for some time. The appellants have produced an extensive list with photographs of a number of properties with areas of hardstanding to support their contention that such areas are commonplace across the CA.
17. It is clear from the Council's response to the appellants that a proportion of the cited examples do not benefit from planning permission. The Council have also criticised the selective nature of the photographic comparison and have provided some context to some of the examples cited. I was able to observe a number of these during my visit to the site and its surroundings. Rather than provide justification for the appeal scheme in the manner intended by the appellants with regard to extent, materials and colouring, I find that the examples provided clearly demonstrate the harm that can arise from the laying of large areas of hardstanding at the expense of gardens of varying styles, character and appearance. The examples cited underline the threat to the character or appearance of the CA that the CACA and the CA Management Plan express and which, for the reasons I have set out herein, the appeal scheme adds to.
18. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that with respect to any building in a conservation area, 'special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area'. The Framework goes on to advise that account should be taken of the desirability of sustaining or enhancing the significance of heritage assets and the desirability of new development making a positive contribution to local character and distinctiveness.
19. Despite the appellants' criticism of the Council's approach to the consideration under s72(1) I find its approach to be consistent with the statutory requirements and the Framework's provisions. As the appeal scheme neither preserves nor enhances the character or appearance of the CA, for reasons I have set out, harm to the significance of the CA arises, albeit that harm would, in the Framework's terms, be less than substantial.
20. A comparison with the condition of the appeal property's frontage prior to the alleged works does not amount to a public benefit, particularly where photographic submissions suggest that it was merely untidy and overgrown. I have no reason to believe that the untidy condition was deliberate, but in any event, I have no evidence before me to indicate that it was a cause of serious harm to the character or appearance of the surrounding area. This is not a public benefit to weigh in support of the appeal scheme, nor have the appellants sought to justify the proposal through the submission of further public benefits.
21. For the reasons set out, I conclude that the appeal scheme fails to accord with Ealing's '*Development Management Development Plan Document*' (2013) (DMDPD) Policies 7.4, 7B and 7C, with the broad aims of London Plan (2021)

(LP) Policies D3 or HC1 and the provisions of the Framework, and there are no public benefits individually or cumulatively that outweigh the harm that results. Supported by the guidance and provisions set out within the CACA and the CA Management Plan, to which I give considerable weight, these policies together seek to protect local character and heritage assets and to ensure high quality development.

22. Given the powers available to me under an appeal made on ground (a), it is possible for me to consider under section 177(1) of the Act, granting planning permission in relation to the whole or any part of those matters specified in the notice. To this end, I am mindful of an alternative scheme submitted previously by the appellants as a separate application for planning permission⁵, albeit that that scheme has not been validated by the Council due to concerns regarding the quality and accuracy of the submission documents⁶. The plans for that scheme nevertheless show an alternative hardstanding layout at the front of the property with what seems to purport to be a smaller area of hardstanding than that attacked by the notice.
23. However, setting aside the Council's concerns over the accuracy of the submitted plans and its validity as an application for planning permission, what is shown on the accompanying plan would remain an extensive area of hard surface. Whilst it appears to show an area of grass at the front and one side of the frontage, there would still remain an extensive area of hardstanding. As such, I am not persuaded that that scheme, such as is shown by the limited detail I have before me, sufficiently addresses the reasons for issuing the notice, or would address the matters set out in my conclusion, above. This scheme would also fail to accord with DMDPD Policies 7.4, 7B and 7C, with the broad aims of LP Policies D3 or HC1 and the provisions of the Framework.
24. With regard to the notice's requirements, the appellants argue that without a requirement to reinstate the land in question to its previous state, the notice fails to provide an improvement or enhancement over the current arrangement. This would, it is argued, result in an outcome more harmful to the character or appearance of the CA than the continued presence of the hardstanding.
25. However, I consider below in relation to the appeal under ground (f) whether the steps required by the notice exceed what is necessary to remedy the breach of planning control set out within the notice. What the appellant argues in this regard however would amount to the required steps being more onerous than those required by the notice. As such, it would not be in the interests of natural justice for me to extend the requirements of the notice to require the restoration of the land to its previous condition. Nor am I persuaded that an acceptable design solution for the appeal property does not exist, such that simply comparing the existing hardstanding to the outcome of complying with the notice does not provide a helpful or meaningful comparison. Should the appellants propose to return the area of hardstanding to its former design and layout, or to any other modified design, that would be a matter for discussion with the Council outside the remit of these appeals.

⁵ LPA Ref No: 222375HH – application dated 29 May 2022.

⁶ Appendix 13 of Council's Appeal Statement

Other Matters

26. I have noted the Council's reference to a previous appeal decision at the appeal site in which an area of hardstanding was proposed. The appeal, which was dismissed, is of some age and appears to pre-date the current development plan and neither party has been able to provide me with the detail of that scheme or the accompanying decision. Nevertheless, the appellants are correct to note the status of the development plan policy and guidance that informed that decision, which were revoked by the adoption of the current development plan⁷. For these reasons, the previous appeal decision is not a matter to which I have given significant weight in respect of the current appeal, which I have determined against the current development plan and the evidence before me.

Conclusion on the appeals under ground (a)

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

The appeal on ground (f)

28. An appeal under ground (f) may be brought if it is felt that the steps required by the notice to be taken 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. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first purpose (s173(4)(a)) is to remedy the breach of planning control which has occurred; the second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.

29. In this case, the notice requires the removal of the hardstanding in its 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 laying of hardstanding, in its entirety, in the front garden. Whilst it is not disputed that there were previously areas of hardstanding within the frontage of the appeal property, to which photographs refer, I have no firm detail of the exact extent thereof. The hardstanding as laid and as attacked by the notice is clearly a single and recent entity. The notice's requirements are entirely consistent with the breach of planning control it seeks to remedy and do not therefore exceed what is necessary to remedy the breach of planning control. The appeal on ground (f) must therefore fail.

Conclusion

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

G Robbie

INSPECTOR

⁷ The Ealing Development Management Development Plan Document (adopted 10 December 2013) and the London Plan (March 2021)