



Appeal Decision

Site visit made on 3 April 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2024

Appeal Ref: APP/R5510/C/24/3337391

Chevron House, 346 Long Lane, Hillingdon UB10 9PF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Adam Finance Ltd against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The notice was issued on 15 December 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of hardstanding to the front elevations of the property.
 - The requirements of the notice are: (i) Remove all hardstanding from the front elevations of the property; (ii) Reinstall the mixed hard and soft landscaping to the front curtilage of the property in accordance with the plans approved under planning permission Ref: 42825E/95/1012; (iii) Remove from the land all the debris, items, fixtures and fittings, building materials, plant and machinery resulting from the works listed in (i) and (ii) above.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (e), (f), 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.
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Decision

1. The appeal is allowed insofar as it relates to the part of the hardstanding shown cross-hatched in black on the plan annexed to this decision and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the installation of hardstanding to the front elevations of the property at Chevron House, 346 Long Lane, Hillingdon UB10 9PF subject to the condition in the schedule at the end of this decision.
2. It is directed that the enforcement notice be varied by:
 - In paragraph 5 deleting the text at step (ii) and replace it with '*Restore the land to its condition before the development took place.*'
 - In paragraph 6 substituting '*Two months*' with '*Three months*' as the period for compliance.
3. The appeal is dismissed, the enforcement notice is upheld as varied and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the installation of hardstanding to the front elevations of the property outside of the area cross-hatched in black on the plan annexed to this decision.

Preliminary Matters

4. The expediency of issuing an enforcement notice can only be considered by way of judicial review.
5. My decision takes into account the revised National Planning Policy Framework (the Framework), published on 19 December 2023.

Applications for Costs

6. An application for an award of costs has been made by Adam Finance Ltd against the Council of the London Borough of Hillingdon. This application is the subject of a separate Decision.

Ground (e) appeal

7. The ground of appeal is that copies of the enforcement notice were not served on the owner and the occupier of the land to which it relates and on any other person having an interest in the land which is materially affected by the notice, as required by s172 of the Act. It is for the appellant to show why this ground of appeal should succeed, the relevant test of the evidence being on the balance of probability.
8. The appeal property contains a modern two storey office building. Copies of the notice were served on the appellant at the property, as well as at their address shown on the Land Registry, with a further copy served at the property addressed to 'the owner/occupier.'
9. The appellant supplied details of 14 businesses who I am given to understand also have their registered office address at the property and who were not served with copies of the notice. There is little firm evidence however relating to the occupation of the property by those businesses, or of any other interest they may have in the property which is materially affected by the notice.
10. Furthermore, given the nature of the alleged breach specified in the notice, i.e., works to a forecourt, I remain to be convinced that any of the businesses not served with a copy of the notice would be materially affected by the notice being upheld. For example, there was no suggestion that any of the businesses would have to move to other premises or that their operations would somehow be impaired as a result. Therefore, the appellant has been unable to show that copies of the notice were not served as required by s172.
11. In any event, at s176(5), the Act provides that where it would otherwise be a ground for determining an appeal under s174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, that fact may be disregarded if neither the appellant nor that person has been substantially prejudiced by the failure of service.
12. The appeal was made on a number of grounds and included a deemed planning application for the works under ground (a). The appellant has thus been able to make full arguments during the course of these proceedings as to why their appeal should be allowed. Based on the limited details provided, I remain to be persuaded that any of the businesses not served with a copy of the notice would have made different or more extensive arguments in relation to the grounds of appeal pursued by the appellant, or that appeals would have been submitted on additional grounds, had they been afforded an opportunity to

participate in the proceedings. As a result, there is no firm evidence of substantial prejudice to the appellant or businesses from any failure of service.

13. Accordingly, the ground (e) appeal fails.

Ground (a) appeal

Main Issues

14. The main issues in this ground of appeal are:

- The effect of the works on the character and appearance of the surrounding area.
- The effect on highway safety.
- Whether the works have increased the risk of flooding.

Reasons

Character and appearance

15. The property is located on a busy main highway. To the north, beyond the junction of a side street is a shopping parade lining both sides of the highway, made up mostly of two and three storey buildings in retail and commercial use. In general, premises along the parade are similarly aligned close to the highway edge. These factors provide an appreciable urban feel to parts of the locality.
16. Immediately opposite and to the south however, properties including the adjoining children's nursery generally possess more residential characteristics. The buildings are mostly similar in terms of their scale, architectural style and external materials. They are also generally set back a good distance from the highway, behind front garden areas containing well-established planting, including occasional substantial trees. In addition, grass verges and maturing street trees extend for a considerable distance along either side of the highway. These factors contribute to a pleasantly verdant and spacious feel in the vicinity of the building, more generally associated with a suburban residential setting. This serves to temper the urban qualities also present in the locality and imparts the definite impression of a 'green corridor' flanking the highway.
17. The principal elevation of the building is set back from the highway behind a forecourt. I am given to understand that although hard surfaced in part, prior to the works a significant portion of the forecourt was covered with soft landscaping, which included maturing trees and shrubs. Drawings accompanying the planning permission granted in 1995 to erect the building show a landscaped front garden area between the building and the highway¹. There is little to suggest that these drawings do not accurately reflect what was approved by the Council pursuant to the landscaping conditions attached to the 1995 permission.
18. Consequently, although the building is commercial in character, forming part of a Local Centre in the Hillingdon Local Plan Part 2: Development Management Policies (DMP), prior to the works the forecourt would have had an appearance

¹ Council Ref: 42825E/95/1012

which very much reflected and contributed positively to the more suburban visual attributes of its setting.

19. The works attacked by the notice comprise the laying of a block paved hardstanding over the forecourt. Being of a similar width to the building and occupying the space between the principal elevation and the highway, the forecourt is of substantial size. The forecourt is considerably larger than most frontages of adjoining buildings. Encompassing almost the entire forecourt, the hardstanding is therefore significant in terms of its surface area. There are few examples of such extensive areas of hardstanding at the front of suburban properties in the locality.
20. The solid surfacing and geometric lines of the hardstanding are largely unrelieved by landscape planting. This compares unfavourably with the softer, well-planted appearance and less extensive areas of hard surface generally associated with the more suburban aspects of the surroundings and which were reflected in the appearance of the forecourt prior to the works. These factors have led to the hardstanding being viewed in the street scene as a somewhat stark and 'engineered' feature, creating a harsher and more urbanised feel which appears alien in the context of the more suburban visual qualities of the setting and almost entirely eroding the natural features that previously contributed positively to the visual qualities of the locality.
21. For the above reasons, the works have caused unacceptable harm to the character and appearance of the surrounding area. This is in conflict with DMP Policy DMHB 11, as the works do not harmonise with the local context. Also, by failing to integrate with the surrounding area taking account of the established townscape character and quality, including providing a landscaping treatment that is suitable for the location, serves a purpose and contributes to local green infrastructure, the works are in conflict with DMP Policy DMHB 12. Furthermore, by not retaining and enhancing the landscaping and trees or providing a landscape scheme appropriate to the character of the area, there is conflict with DMP Policy DMHB 14.
22. Additionally, by not achieving a high standard of design which enhances the local distinctiveness of the area, contributes to a sense of place, is appropriate to the buildings and townscape and which makes a positive contribution to the local area, the works conflict with Policy BE1 of the Hillingdon Local Plan: Part 1-Strategic Policies. The failure to achieve a well-designed and beautiful place is inconsistent with the Framework. Since Policy D14 of the London Plan (LP) refers to noise however I am unclear of its relevance to this matter.
23. The appellant advanced a 'fallback' position of laying a hardstanding of up to 50m² over part of the forecourt, utilising the planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) at Article 3, Schedule 2, Part 7, Class G. Since no conditions attached to the 1995 permission remove the right to rely on the provisions of the GPDO, there is little sound reason to believe that the appellant might not seek to do so in the event the notice is upheld.
24. Based on the drawing supplied, the smaller area of hardstanding equivalent to that permitted by Class G would still leave a substantial portion of the forecourt available to accommodate soft landscaping. I shall therefore afford the fallback position limited weight in assessing the visual impact of the totality of the

hardstanding, as it would not cause similar or greater harm to the character and appearance of the surrounding area.

25. I have also considered however whether permission should be granted for the part of the hardstanding equivalent to that which could be re-installed under Class G. At s177(1)(a), the Act provides the power to grant planning permission in respect of the matters stated in the notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or part of any of the land to which the notice relates.
26. The smaller area of hardstanding equivalent to that permitted by Class G would, together with an appropriate scheme of landscape planting, overcome the visual harm identified. There would be no conflict with the relevant Development Plan policies referred to above, when set in the context of what could otherwise be achieved through the exercise of permitted development rights. Moreover, the purpose of the enforcement regime is remedial, not punitive. It makes little sense to insist on total removal of the hardstanding if the appellant can immediately re-install it in part following compliance with the notice. The part of the hardstanding to be permitted can clearly be separated from the remainder. I am satisfied that permission could be granted for that part with the necessary precision so as to avoid any uncertainty.

Highway safety

27. There is no new vehicular access to the highway and the notice does not allege as such in the description of the breach. The appellant explained that there were previously two parking spaces in front of the building and that the works had initially enabled vehicles to access and egress the forecourt in forward gear from the side street via a footway crossing. However, since bollards recently installed within the highway physically prevent vehicular access to the forecourt from the side street, such a benefit can no longer be realised.
28. Little firm evidence was supplied regarding any occasion on which the forecourt has been used for vehicle parking following installation of the bollards. Raised kerbing and a traffic island also makes it awkward for drivers of any vehicles attempting to access the forecourt from the highway in front. There were no vehicles parked on the forecourt during my unannounced visit. In addition, there was little evidence which might indicate that the forecourt is routinely used to park vehicles, such as significant tyre marks or oil deposits on the hardstanding. Moreover, there is an ample parking area at the rear of the property. During my visit, there were some spaces available within the rear parking area, although it might well be busier at other times.
29. Restrictions applying to parking on the highway in the vicinity make it possible that persons may on occasion manoeuvre onto and off of the forecourt to park their vehicles. Therefore, the possibility of isolated occurrences of vehicle parking on the forecourt cannot be entirely ruled out. Nevertheless, it is not unreasonable to assume that for the most part, vehicles would not be driven over the footway in contravention of highways legislation. In any event, reducing the hardstanding in size as set out above would further limit opportunities for parking.
30. Therefore, the works have not caused unacceptable harm to highway safety. There is little firm evidence which might lead to a different conclusion. As the

transport impacts are managed, there is no conflict with DMP Policy DMT 1. Given that there is no deterioration in the safety of road users and residents, there is also no conflict with DMP Policy DMT 2. In addition, since the forecourt is not used for vehicle parking there is no conflict with DMP Policy DMT 6. Furthermore, in the absence of harmful impacts on the safety of pedestrians and cyclists there is no conflict with DMP Policy DMHB 12 in this respect. For similar reasons, there is also no conflict with LP Policies T4 and T6.

Flood risk

31. I am given to understand that a system has been installed to drain the surface water from the hardstanding, although there was little obvious above ground evidence in that respect. In any event, reducing the size of the hardstanding as set out above is likely to increase the capacity for surface water drainage within the property as well as lessening potential run-off. The approval, implementation and maintenance of an appropriate scheme of surface water drainage could be secured by a suitable planning condition.
32. Therefore, although the property is in a Critical Drainage Area there is no conflict with DMP Policy DMEI 10, as adequate provision for the control and reduction of surface water run-off rates can be made. Similarly, by ensuring that flood risk is minimised and mitigated and that residual risk is addressed and through the provision of sustainable drainage, there is no conflict with LP Policies SI 12 and SI 13.

Other Matters

33. The appellant explained that incidences of anti-social behaviour on the forecourt have reduced following the works, due to increased natural surveillance. However, I remain to be convinced that a similar outcome could not have been achieved by other measures, for example more regular routine maintenance of the landscape planting and/or enhanced security arrangements such as additional patrols or CCTV. Therefore, I afford this matter limited weight.
34. Since there is no firm evidence of the works having any adverse effect on air quality levels in the vicinity, I afford this matter little weight. Other matters raised by an interested party, including the alleged repositioning of street furniture within the highway, are beyond the scope of this appeal.

Conditions

35. After seeking comments from the main parties, I shall impose a condition requiring the approval, implementation and maintenance of schemes of landscaping and surface water drainage within defined timescales. This is to provide a visually satisfactory setting for the development in order to safeguard the character and appearance of the surrounding area and to ensure that the property is satisfactorily drained so that there is no increased risk of flooding.
36. The condition is drafted in the form set out below because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the implementation of the required schemes, because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the permitted part of the hardstanding may only remain if the appellant complies with its requirements.

Conclusion-Ground (a) appeal

37. Subject to the conditions set out above, the part of the hardstanding equivalent to that which would otherwise be permitted by the GPDO would not cause unacceptable harm to the character and appearance of the surrounding area, nor would it increase flood risk and there is no conflict with the Development Plan. There are no material considerations that indicate the decision should be made other than in accordance with the Development Plan. Granting permission for this part of the works would therefore overcome the planning difficulties at less cost and disruption compared to total removal. Consequently, I conclude that the ground (a) appeal should succeed in part i.e., in relation to part of the hardstanding only.

Ground (f) appeal

38. The ground of appeal is that the requirements of the notice are excessive.
39. An enforcement notice can have the purpose of remedying the breach, including by restoring the land to its condition before the breach took place, or it can remedy any injury to amenity which has been caused by the breach. The notice requires the works to be totally removed, as opposed to undertaking modifications by, for example, reducing the extent of the hardstanding. Removing the works would restore the land to its condition before the breach took place. Therefore, although not made clear on the face of the notice, its purpose must be to remedy the breach.
40. My understanding is that the previous hard surface on part of the forecourt was removed as part of the works. The works therefore form part of one unlawful operation; there is little before me which might suggest otherwise. The fallback position has been considered in the ground (a) appeal. In the context of ground (f), reducing the size of the hardstanding to the extent that would otherwise be permitted by Class G would not restore the property to its condition prior to the breach taking place. Accordingly, the requirement in step (i) to remove all the hardstanding is not excessive for the purpose of remedying the breach.
41. It is also possible to remedy the breach 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, including where that permission is granted by the GPDO. However, as permission will be granted for the part of the hardstanding equivalent to that otherwise permitted by Class G, it is unnecessary to consider whether the notice should be varied to provide that as an alternative.
42. In relation to step (ii), the drawings attached to the 1995 permission are insufficiently clear in terms of what the appellant is required to do to achieve compliance. The drawings do not include a planting schedule or surface treatment details. As a result, the appellant cannot be exactly certain of what reinstating the mixed hard and soft landscaping to accord with those drawings would involve.
43. In the circumstances, I shall vary the notice to delete the text in step (ii) and replace it with a requirement to restore the land to its condition before the development took place. The appellant is likely to have the best knowledge of what the previous condition of the property was. There would be no

uncertainty. No injustice would be caused to the Council in varying the notice in this manner, as the breach of planning control would still be remedied.

44. Therefore, the ground (f) appeal succeeds to the limited extent set out above.

Ground (g) appeal

45. The ground of appeal is that the time allowed for complying with the notice requirements is too short.

46. The operations and planting associated with the remedial works would not be particularly extensive or complex and they are unlikely to involve the use of specialist plant or equipment. In my estimation, the remedial works could be undertaken in little more than a few weeks.

47. On the other hand, the two-month compliance period specified takes little account of the appellant having to arrange for suitable contractors to undertake the works and of the period of notice that might be required before commencement. Furthermore, there is likely to be an element of pre-planning required as well as lead-in times involved in obtaining the materials and planting supplies associated with the works. The required planting would have to be carried out at a suitable time. There is limited scope for unforeseen delays caused by, for example, unfavourable weather conditions. Due to the uncertainty involved, the Council's power in s173A(1)(b) of the Act to extend the period for compliance is of little relevance when considering the reasonableness of the period specified in the notice.

48. Having regard to all of the above factors, in my view a compliance period of three months would be more reasonable. This would stop short of the extension to four-months sought by the appellant. However, it would strike a better balance between remedying the planning harm identified as soon as is practicable, whilst also avoiding, so far as is possible, placing a disproportionate burden on the appellant. There would be no injustice to the Council in extending the compliance period accordingly. Therefore, the ground (g) appeal succeeds to this limited extent.

Conclusion

49. For the reasons given above I conclude that the appeal should succeed in part only and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with variations and refuse to grant planning permission on the other part. The requirements of the upheld and varied notice will cease to have effect so far as they are inconsistent with the permission which I will grant by virtue of s180 of the 1990 Act.

Stephen Hawkins

INSPECTOR

PLANNING CONDITIONS SCHEDULE

- 1) Unless within three months of the date of this decision schemes for:
(a) Soft landscape works to the forecourt, the details of which shall include planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate, together with a timetable for implementation and a schedule of maintenance, and; (b) The drainage of surface water from the hardstanding hereby approved to a permeable or porous area within the curtilage of the building, including details of the maintenance of that drainage; have been submitted in writing to the Local Planning Authority for approval, and unless the approved schemes are both implemented within three months of the Local Planning Authority's approval, or otherwise in respect of the scheme of soft landscape works within any longer period for implementation specified within the approved scheme, the hardstanding and its constituent materials shall be removed until such time as both schemes have been approved and implemented.

If one or both of the schemes in (a) and (b) above in accordance with this condition are not approved by the Local Planning Authority within six months of the date of this decision, the hardstanding and its constituent materials shall be removed until such time as schemes approved by the Local Planning Authority are implemented.

Upon implementation of the approved scheme specified in (a) of this condition, all planting comprised in the approved details of landscaping which within a period of 5 years from the date of the approval of that scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. Upon implementation of the approved scheme specified in (b) of this condition, that scheme shall thereafter be maintained in accordance with the approved details.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.



Plan

This is the plan referred to in my decision dated:

by Stephen Hawkins MA, MRTPI

Land at: Chevron House, 346 Long Lane, Hillingdon UB10 9PF

Reference: APP/R5510/C/24/3337391

Scale: Not to scale

