



Appeal Decision

Site visit made on 2 December 2008

by Neil Roberts BA DipTP MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
8 December 2008

Appeal Ref: APP/Y5420/C/08/2078871 555 White Hart Lane, London N17 7RN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr D Dervish against an enforcement notice issued by the Council of the London Borough of Haringey.
- The Council's reference is UNW/2008/00183.
- The notice was issued on 28 May 2008.
- The breach of planning control as alleged in the notice is without planning permission on the land shown edged red on the plan attached to the notice unauthorised engineering works (land excavation), installation of retaining wall and the creation of hard standing area to facilitate use as a car park.
- The requirements of the notice are:
 1. Reinstate the hardstanding to its previous form of gravel.
 2. Remove the retaining wall and all resulting debris.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. I direct that the enforcement notice be varied by:
 - (a) deleting at paragraph 5 requirement 1 to reinstate the hard standing to its previous form of gravel, and substituting therefore:

"1. Reinstate the hard standing to its previous form of an earth bank."
 - (b) deleting at paragraph 5 requirement 2 to remove the retaining wall and all resulting debris, and substituting therefore:

"2. Repair the retaining wall where it is bulging."
 - (c) deleting at paragraph 5 "2 month" as the period for compliance and substituting therefore "9 months";

Subject to these variations I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. There is an implied criticism by the appellant about the precise area of land to which the enforcement notice applies, and an annotated copy of the plan attached to the notice has been submitted. This appears to me to be a somewhat academic point. The red line on the plan encompasses the wider

area within which the alleged unauthorised works have been undertaken. It is readily apparent from the description of the works (namely land excavation, creation of a hard standing for use as a vehicle park, and erection of a retaining wall) what is targeted by the notice. The appellant and neighbouring residents clearly understand the intention of the notice. I see no need, therefore, to vary or correct the plan attached to the notice.

3. When the appeal was lodged no ground (c) appeal was made, and there is no reference to ground (c) in the Grounds and Facts submitted with the appeal form. However, the appellant's Statement and Final Comments include various references to the works subject of the notices being wholly or partly development permitted by The Town and Country Planning (General Permitted Development) Order 1995 (GPDO). That is tantamount to an appeal on ground (c), namely that there has not been a breach of planning control. The Council has not responded to the appellant's claims in respect of the lawfulness of the development. Nevertheless, I have considered the matter.

Reasons

The Lawfulness of the Development

4. It is argued that the retaining wall is permitted development by virtue of the provisions of Schedule 2 Part 2 Class A of The Town and Country Planning (General Permitted Development) Order 1995 (GPDO). Part 2 is headed "Minor Operations" and Class A relates to walls or other means of enclosure, with permitted walls having a maximum height of 2 metres above ground level. In this case there are effectively two ground levels, the Thetford Road housing being on higher ground than the appeal site. In my view the correct assessment is from the appeal site, as that is where the works took place. On that basis the retaining wall, together with the steel mesh fence which tops it, is far in excess of 2 metres in height. I regard the wall and fence together as being, as a matter of fact and degree, a single means of enclosure. Criterion A.1(b) of Class A is, therefore, not met.
5. Taking the matter a step further, in my judgement the works carried out, namely excavation of the former earth bank and construction of the retaining wall and associated fence, are part and parcel of a single operation. Given the nature and scale of the operation I consider the works carried out, as a matter of fact and degree, fall outside an everyday interpretation of "Minor Operations". That is a second reason why the works in respect of the retaining wall do not constitute permitted development.
6. So far as construction of the hard standing is concerned, it is argued that this is permitted by Schedule 2 Part 8 Class C of the GPDO. Creation of the hard standing necessarily involved, as part and parcel of a single operation, excavation of the earth bank and construction of the retaining wall. I have concluded in paragraphs 4 and 5 above that those latter two elements of the works are not permitted development. On that basis I consider that construction of the hard standing itself (because it has involved the carrying out of works which require, but have not been granted, a specific planning permission) is not permitted development.
7. For the reasons given above a ground (c) appeal would have failed.

The Ground (a) Appeal

Main Issues

8. The main issues are: first, the effect of the development on living conditions of occupants of adjoining dwellings; and second, whether the development prejudices the well being of trees subject of a Tree Preservation Order.
9. So far as *the first issue* is concerned there are three main areas of concern: increased noise and general disturbance; ground subsidence; and loss of privacy.
10. Dealing first with the matter of noise and disturbance, the area of works lies within an industrial estate where some activities take place for 24 hours a day. There is also a one way traffic route around the industrial estate, part of which route is close to the rear of the houses in Thetford Close. It is inevitable, therefore, that local residents already experience a high degree of disturbance. However, use of the new partly constructed hard standing for parking, immediately adjacent to the rear boundaries of Thetford Close dwellings, would be likely in my opinion to add noticeably to the loss of residential amenity already experienced.
11. The effects of the development in terms of subsidence affecting the Thetford Close dwellings cause me particular concern. There are already indications that the new retaining wall is buckling, as is the fence along the top of that wall. It is hardly surprising that local residents complain of the effects of the removal of the former earth bank. To my mind substantial loss of residential amenity has directly resulted from the excavation of that bank.
12. One of the reasons for issuing the notice was reduction in privacy to the rear amenity areas of the neighbouring dwellings. It seems to me that given the substantial difference in levels, with the rear gardens being higher than the appeal site, there is unlikely to be any loss of privacy.
13. On balance, however, I consider there has been an unacceptable loss of residential amenity to neighbouring residents, in conflict with development plan policies UD3 and ENV6.
14. Turning to *the second issue* it is my understanding that no trees subject of the interim Tree Preservation Order (TPO) in respect of an area of land generally north-east of the area of works have been affected by the works subject of this appeal. If the project were completed I doubt that any harm to trees subject of that TPO would arise.
15. I have considered whether the development could be rendered acceptable by the imposition of conditions on a planning permission. In my view, however, the drawbacks of the development are too fundamental to be overcome in that manner. On balance, I have concluded that the development is unacceptable. Accordingly, the ground (a) appeal fails.

The Ground (f) Appeal

16. There is evidence from local residents that they have experienced damage to their properties arising from subsidence following excavation of the former earth bank, despite the construction of the retaining wall. In that situation I

consider the requirement to remove the retaining wall to be ill conceived. If it were removed I feel there can be little doubt that parts of the gardens of the Thetford Road properties would collapse into the appeal site. I would add that I also have misgivings about the Council's alternative suggestion that the retaining wall could be replaced by a recreated earth bank. I fear that such a scheme would not give the necessary stability to Thetford Road gardens, and that subsidence affecting those properties would continue to occur.

17. The appellant assumes that, if I were to dismiss the appeal, I would give some guidance as to the nature of the restoration works considered appropriate. It strikes me that the most sensible way forward is to repair that part of the retaining wall showing signs of collapse, and then to recreate an earth bank on the partially completed hardstanding. That would reflect the original condition of the land better than the notice's requirement to replace the concrete hardstanding with gravel, and would also have some bolstering effect on the stability of the retaining wall and the Thetford Close gardens.
18. I intend to vary the notice's requirements along the lines I have described. To that extent the ground (f) appeal succeeds.

The Ground (g) Appeal

19. The appellant asks that the period for compliance be extended to 9 months or a year to reflect the complexity of carrying out the notice's requirements. I am varying those requirements, but even so I agree that 2 months is an unreasonably short period for compliance. I shall, therefore, extend the period for compliance to 9 months. To that extent the ground (g) appeal succeeds.

Conclusion

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Neil Roberts

Inspector



Appeal Decision

Site visit made on 25 February 2009

by **C J Leigh** BSc(Hons) MPhil(Dist) MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
1 April 2009

Appeal Ref: APP/Y5420/A/08/2083209

555 White Hart Lane, Wood Green, London, N17 7RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Steamhouse Ltd against the decision of the Council of the London Borough of Haringey.
- The application Ref. HGY/2008/0599 was dated 26 February 2008 and was refused by notice dated 11 June 2008.
- The development proposed is the erection of a new double height conference centre with front and rear ancillary accommodation.

Decision

1. I dismiss the appeal.

Reasons

The proposed use

2. The appeal site lies within an area identified in the London Borough of Haringey Unitary Development Plan 2006 (UDP) as a Defined Employment Area (DEA) – Industrial Location. Policy EMP2 of the UDP states that such DEAs will be protected and enhanced for those uses falling within classes B1(b) & (c), B2 and B8 or similar uses, and that uses outside these classes will only be permitted if all three criteria set out in the Policy are satisfied: that the use is ancillary to a primary 'B' class; will not compromise the employment status of the DEA; and is a complimentary use needed for the DEA to function effectively. The supporting text to Policy EMP2 expands further upon the type of non 'B' class uses that might be acceptable, and in my view gives further guidance on the uses envisaged by the Policy, namely uses small in scale that directly complement or are related to 'B' class uses in the DEA.
3. A conference centre does not fall within the 'B' classes permitted within the DEA. It is evident to me from the submissions that the proposed centre is intended to be a new facility that is not related or ancillary to the existing uses within the DEA. The proposal would therefore conflict with Policy EMP2. Furthermore, PPS6: Planning for Town Centres (2005) also states that a conference facility is a main town centre use. The Council inform me that the appeal site is not within a town centre, and have drawn my attention to the absence of any evidence from the appellants regarding the sequential approach to site selection for the proposed development. On the basis of the information before me, I therefore share the Council's concern that the need for the proposed use in an out-of-centre location has not been demonstrated. Thus, in my view the proposal would conflict with the key objective set out in PPS6 to

roads. I think this increased parking pressure would be harmful to highway safety, the freeflow of traffic and the convenience of existing residents of the area, and so conflict with Policy UD3 of the UDP.

8. The appellants have submitted information that demonstrates that vehicular access into the site is adequate to safely accommodate the proposed use, and that adequate capacity exists on the surrounding highway network for vehicles travelling to visit the conference centre. From my observations at the site visit I see no reason to disagree with these findings, and I note that the Council's decision notice did not object to this matter. However, my findings on this issue do not outweigh my other conclusions regarding parking provision, and so the conflict with the UDP remains.

Design

9. The proposed conference centre would be sited forward of the existing Safehouse building. That building is substantial in height and scale, with a utilitarian design that does not contribute positively to the wider area. The adjoining commercial building to the north east is similarly large in scale and of no architectural merit, whilst to the south west is a two storey building of unremarkable design.
10. The submitted drawings show a large, two storey building of an uncomplicated design approach. The areas of glazing and central 3-storey section provide relief to the simple appearance of the building, with the use of grey and white panels indicated to the walls. In the context of the surrounding area, I consider the scale, design and use of materials to represent an appropriate design approach for the site. It would sit comfortably within the established streetscene, and provide an appropriate frontage to the road. Thus, I am satisfied that the objectives of Policy UD4 of the UDP would be met.

Conclusions

11. Although I have found in favour of the scheme in a number of respects, it is my overall conclusion that the conflict I have identified with relevant planning policies in relation to the first two main issues is sufficient to merit the withholding of planning permission. For the reasons given, and having had regard to all other matters raised, I have dismissed the appeal accordingly.

C J Leigh
INSPECTOR