

Appeal Decisions

Site visit made on 3 October 2016

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 3 November 2016

Appeal A, B and C Refs: APP/T5150/C/16/3146788, 89 and 90 119 A-C Dartmouth Road, London NW2 4ES

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Peter Hill (Appeal A), Mr Max Monsarrat (Appeal B) and Mr Christopher Schelvan (Appeal C) against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/15/0719, was issued on 16 February 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the formation of a new hard surface to the front of the garden of the premises.
 - The requirements of the notice are to:
 - (1) Remove the hard surface from the front garden of the premises, and
 - (2) Remove all arising to ensure that the surface material comprises only soil.
 - The period for compliance with the requirements is three months.
 - The appeals are proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. The appeals are allowed on ground (g) and the enforcement notice is varied by the deletion of the number and text *1 month* in section 6, time for compliance, and the substitution therefor by *3 months*. Subject to this variation, the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeals on ground (c)

2. The onus to make their own case out is firmly upon the appellants, with the standard of proof being the balance of probabilities. The claim is that the alleged matters do not constitute a breach of planning controls. For the following reasons, I profoundly disagree.
 3. The Council's dated photographic evidence is particularly instructive of the work. During the period leading up to the issuing of the notice, the existing paved area has been broken up and dug out. The nature of work suggests it has been excavated by use of plant and machinery. The images show compacted road stone sub-base has been laid. While flagstones have been re-used, the entire forecourt has been re-laid over concrete. The upper surface has been cement grouted to form a new forecourt parking space. I do not consider that the size of hard surfacing is small to be regarded as *de minimis*.
 4. The evidence indicates that the work has been carried out and supervised by someone carrying on trade as builder, which suggests an element of pre-planning owing to the type of engineering works. A degree of skill is necessary
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to carry out the operations given the scale of the work. The surfaced area has materially altered the site's layout and appearance, because of the nature and type of work. As matter of fact and degree, I find that the work involved in the formation of the hard surface amounts to an engineering operation, which firmly falls within the definition of *development* for planning control.

5. The appellants should show that express planning permission is not required for the development, but they provide no such evidence. Permitted development rights, due to article 2 – interpretation, set out in Class F, Schedule 2, Part 2 to the Town and Country Planning (General permitted Development) (England) Order 2015 as amended do not apply in this case. This is because no. 119 consist three self-contained flats whereas these permitted development rights are limited to development within the curtilage of a dwellinghouse.
6. Pulling all of the above points together, at the time when the notice was issued a new hard surface to the front of the garden had been formed as a matter of fact. That amounts to development for development control purposes. Express planning permission is required and it has not been obtained. Applying the balance of probabilities test, I conclude that the matters alleged in the notice constitute a breach of planning control. Ground (c) must fail.

The appeals on ground (a) and the deemed applications

7. The **main issue** to consider is whether the development preserves or enhances the character or appearance of the Mapesbury Conservation Area (CA).
8. The CA's special interest is derived from the architectural style of buildings and geometric layout of tree-lined streets. The locality is defined by properties with deep forecourts and low brick boundary walls located between tall piers. Front landscaped gardens make a significant contribution to the setting of the CA. An article 4 direction restricts permitted development rights for the construction of hard standing within curtilages.
9. No. 85's frontage has been virtually paved over and there is limited planting, especially adjacent to the public footpath. Thus, a wide gap has been formed that is visually inconsistent with the appearance of properties in the street scene. In my assessment, the scale of the forecourt and wide gap is uncharacteristic of the area's suburban character. There is an added complexity. This is because insufficient evidence has been provided to show the hard surface is constructed from porous material. No provision has been made for surface water run-off. The design increases likelihood of water run-off onto the adjacent highway.
10. The appellants contemplate an alternative scheme in that the hard surface could be altered by installing drainage channel to facilitate surface water run-off and additional soft landscaping could be introduced. I do not consider such an alteration would satisfactorily address concerns about the size and scale of the hard surface. Planning conditions cannot be imposed to make what is materially harmful development acceptable in planning terms.
11. A planning application has been submitted for the development of the forecourt in 2013, yet it has not been determined by the Council. The claim that the development should be permitted owing to existence of similar paved frontages in the street, including in and out vehicle accesses with semi-circular drives,

does not stand up to scrutiny. In comparison, the appeal development detracts from the layout and character of properties in the CA, because of the extent and scale of the forecourt and limited opportunistic landscaping. I do not consider that visually harmful development should be allowed just because there are examples of paved forecourts in the wider locality. Each proposal needs to be evaluated upon its individual merits. These arguments do not provide clear and convincing justification to grant planning permission for harmful development.

12. On balance, the other considerations advanced in support do not outweigh the real and serious harm to the character and appearance of the CA I have identified above. I therefore conclude that the development fails to preserve the character or appearance of the CA. Accordingly, the scheme fails to comply with policies BE2, BE7, BE25, BE28 and EP12 to Brent Unitary Development Plan 2004, saved by direction of the Secretary of State, broadly consistent with national policy found in paragraph 56, 126, 131 and 132 to the National Planning Policy Framework.

The appeals on ground (f)

13. It is necessary to consider whether the steps required by the notice are excessive. From the document as a whole, it seems to me that it seeks to remedy the breach of planning control. The merits of the alternative scheme advanced have been evaluated. I do not consider that scheme would achieve the purpose behind the notice's requirements. Even if an alternative view is to prevail, the appellant has not shown how the steps could be rephrased so as to give effect to that proposal.
14. In my assessment, detailed building work is necessary to remove sections of the paved area for soft landscaping purposes. There is also lack of drainage provision for surface water run-off. These details would need submitting to the Council for its approval. This action cannot be required by a variation to the notice. I therefore find the terms of the latter cannot be rephrased without introducing significant degree of imprecision. Ambiguity in the notice's terms has the potential to create interpretational issues. That is unacceptable because of the potential consequences for non-compliance.
15. Nothing short of total compliance would achieve the purpose behind the requirements. The steps required are not excessive. Therefore, ground (f) must fail.

The appeals on ground (g)

16. It is necessary to consider whether the compliance period is too short. I am of the opinion that one month is too short given the nature of the work required by the notice. However, I also reject the claim that four months is required to find and appoint suitable contractors. The breach of planning control should not be allowed to continue more than absolutely necessary. Having regard to the nature and type of work involved in complying with the notice's terms, a compliance period of three months from the date of my decision is reasonable. I have therefore varied the period of compliance as stated above. Ground (g) succeeds.

Appeals A, B and C - conclusions

17. For the reasons given above, and having regard to all other matters, my inescapable conclusion is as follows.
18. The appeals on ground (c) fail as the matters stated in the issued notice constitute a breach of planning control.
19. The appeals on ground (a) also fail and there is nothing excessive with the requirements so ground (f) is also dismissed.
20. The appeals on ground (g) succeed, because a reasonable period of compliance is three months.
21. I have upheld the enforcement notice and refused to grant planning permission on the deemed applications.

A U Ghafoor

Inspector