
Appeal Decisions

Site visit made on 5 December 2016

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 31 January 2017

Appeal A Ref: APP/T5150/C/16/3154989 163 Melrose Avenue, London NW2 4NA

- 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 Mohammed Sabar Mughal against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 13 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the formation of a hard surface to the front of the premises.
 - The requirements of the notice are: Step 1 Remove the unauthorised hard surface from the front of the premises; and Step 2 Remove all arising materials and debris to ensure that the surface material comprises soil only and either plant shrubs or turf over the area.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/T5150/C/16/3157892 165 Melrose Avenue, London NW2 4NA

- 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 Mohammed Sabar Mughal against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 25 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the formation of a hard surface to the front garden of the premises.
 - The requirements of the notice are Step 1 Remove the unauthorised hard surface from the front garden of the premises. Step 2 Remove all arising materials and debris to ensure that the surface material comprises soil only and turf over the land. Plant a privet hedge behind the front wall. Step 3 Erect a 700mm high brick wall between 163 and 165 Melrose Avenue to the front of the properties.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

1. It is directed that the enforcement notice is varied by the deletion of the words 'to ensure that the surface material comprises soil only and either plant shrubs or turf over the area' and the substitution of the words 'from the site' in Step 2.
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Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. It is directed that the enforcement notice is varied by the deletion of the words 'to ensure that the surface material comprises soil only and turf over the land. Plant a privet hedge behind the front wall' and the substitution of the words 'from the site' in Step 2 and the deletion of Step 3. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. Nos 163 and 165 Melrose Avenue comprise a pair of semi-detached houses each with a frontage area separating the houses from the pavement. The appellant in both appeals is the same and he has laid a large, concrete, hard surface to both frontage areas which slopes down to the pavement adjacent to No 163. Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 sets out that hard surfacing or replacing a hard surface to the front of a house greater than 5 sq m in area can be permitted development (PD). This is on the basis that the hard surface is within the curtilage of the dwelling house and either the hard surface is made of porous materials or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage. The Council allege that the works carried out by the appellant require planning permission and no permission exists. The appellant, who is not professionally represented, does not dispute that there has been a breach of planning control and that the development is not PD as there are no ground (c)¹ appeals.
4. In respect of No 163 (Appeal A), the appellant initially appealed on ground (b), that there had not been a breach of planning control, as a matter of fact. As his submissions actually related to ground (d)² he subsequently confirmed that he wished to pursue his appeal on ground (d).
5. In respect of No 165 (Appeal B), the appellant submitted an appeal on ground (d) but provided no statement or evidence to support that ground of appeal. His Statement of Case for Appeal A deals with the hard surface at both properties and the appellant clearly considers both breaches were carried out as one operation and are one breach of planning control. He has not made separate arguments for two separate hard surfaces.
6. The Council's initial Statement of Case (SoC) responded to the ground (b) appeal but they subsequently provided an amended SoC in respect of the ground (d) appeal. They made identical comments on ground (d) for both appeals. In the interests of fairness the appellant was given additional time to make any final comments on the Council's amended SoC. The appellant made further comments which I have taken into account in determining these appeals.
7. The hard surface of concrete has been laid across the frontage of both houses which neighbours say was poured in one operation. At the site visit I saw that the concrete was laid smoothly across both frontage areas and was even in

¹ This ground of appeal is that those matters (if they occurred) do not constitute a breach of planning control.

² This ground of appeal is that at the date the notice was issued, no enforcement action could be taken.

colour which, on its face, accorded with the neighbours' recollections of the work taking place as one operation.

The appeals on ground (d)

8. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. He needs to show, on the balance of probabilities that the laying of the concrete hard surface at both properties was done more than four years before the notices were issued. The relevant dates in this context are 13 June 2012 and 25 July 2012.

The appellant's case

9. The appellant bought No 163 in 1991 and No 165 in 2010. The frontage at No 163 was mostly concrete and a mixture of concrete and slabs with weeds growing through at No 165. In 2001 the appellant paid the Council to drop the kerb outside No 163 and the works took place in early 2002. At that point the front boundary wall of No 163 was removed and where the base of the wall had been was concreted over. Following the purchase of No 165 in 2010 the appellant removed the flank boundary wall dividing the frontages between the two properties. He could then park outside not only No 163 but also No 165 using the dropped kerb outside No 163 to access this area. In 'late' 2015 he re-surfaced both frontage areas with fresh concrete as he considered they were in a poor state of repair.
10. The appellant submits a photograph from Google street view that shows the dropped kerb outside No 163, the area of new concrete where the wall had been and the lack of a wall between the frontage areas of both properties. This is undated. He also submits letters of support from the occupiers of Nos 151a, 161, 165, 166, 168, and 169 who have all lived in their properties for 23, 7, 5, 37, 2 and 6 years respectively. Residents recall a hard surface to the front of both properties in various states of repair and that between 1 and 3 years ago a fresh layer of concrete was poured across both properties.

The Council's case

11. The Council accept that there had been a hard surface in existence at the front of No 163 for over four years prior to the current works taking place. This is shown in their Google street view extracts from June 2008, August 2014 and June 2015. However, they do not accept that there used to be a hard surface at No 165 prior to the current works. They also state that they have no record of either approving the works for the hard surface outside No 163 or carrying out the dropping of the kerb in 2002. The Council's Google street view photographs of the site in their view demonstrate that there was an element of soft surfacing outside No 165.

Assessment

12. The appellant's evidence contradicts what he claims in his ground (d) appeals as he states that the replacement hard surface was laid 'late' 2015 which was after the relevant dates. Neighbours who support his case can be no more precise and refer to new concrete being poured between 1 and 3 years ago. The Council's evidence shows that the more recent hard surface was not in place in June 2015. I consider that the appellant has failed to demonstrate any

four year period of immunity for the concrete hard surface across both properties, on the balance of probabilities.

13. The Council's view on the state of the surface at the front of No 165, prior to the recent works taking place, is based on Google imagery. I am not satisfied that it is possible to deduce whether there was a soft or hard surface present as the existing front wall obscures the view and the aerial imagery is unclear. I therefore give less weight to this evidence. I give more weight to the evidence from a number of neighbours who have lived near the appeal sites for a number of years and have specific memories associated with their statements. Some of these include visiting No 165 after a loft conversion was completed in 2012 and noting the hard surface of the frontage of that property and the removal of the dividing boundary wall between the frontages.
14. The Planning Practice Guidance advises³ that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to reject it. This is provided the appellant's evidence alone is sufficiently precise and unambiguous, on the balance of probabilities.
15. As I have found the appellant's own evidence contradicts what he claims, he has not satisfied the requirement to submit evidence that is sufficiently precise and unambiguous, on the balance of probabilities. Consequently he has not discharged the onus of proof that the replacement hard surface laid on both frontages has been in existence for four years before the issue of the notices. The appeals on ground (d) therefore fail.

Other Matters

16. Notwithstanding the lack of any appeals on ground (f)⁴, I consider the steps required by each notice are excessive. The effect of both sets of requirements is to re-instate a front garden to each property where I have concluded none existed previously. All that can be required is that the frontages to both properties are restored to their condition before the breaches took place. To that end I will direct that Step 2 on each notice is varied. With regard to Step 3 on Appeal B, this Step also needs to be varied as the demolition of the dividing wall did not require planning permission and therefore to require its re-instatement is excessive.

Conclusions in respect of both appeals

17. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notices with variations.

D Fleming

INSPECTOR

³ Reference ID: 17c-006-20140306

⁴ The appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control.