



Appeal Decision

Site visit made on 9 July 2019

by Thomas Shields MA DipURP MRTPI

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

Decision date: 31 July 2019

Appeal Ref: APP/T5150/C/18/3215674

10 Coverdale Road, London, NW2 4BU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
- The appeal is made by Mr Eran Eisenberg against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 3 October 2018.
- 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 and the erection of a brick boundary wall and iron gate.
- The requirements of the notice are:
 - STEP 1 Remove all hard surface at the front of the premises and remove all materials associated with the hard surface from the premises.
 - STEP 2 Provide soft landscaping to reflect the original condition of the front garden as shown on the attached photographs to the notice.
 - STEP 3 Remove the unauthorised iron gate and demolish the brick boundary wall to the front of the premises. Remove all materials/debris arising from this demolition.
 - STEP 4 Erect a front boundary wall using similar materials and of a similar height and position as shown on the attached photographs to the notice.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Act.

Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

The Enforcement Notice

1. It is clear from the representations, and from my inspection of the site, that the description of the development in the enforcement notice is incorrect in that it refers to a gate (singular) whereas the development as constructed includes two gates. Also, although not specifically referred to in the notice, railings fixed into the wall, referred to by both parties, are an integral element of the development carried out. The appellant's case on ground (a) relates to both the railings and gates (plural) and the Council has also argued its detailed case on the same basis. I am therefore satisfied that I can correct the notice to refer to "gates" and to include "railings" without prejudice to the parties' cases.
2. The appeal made on ground (c) relates specifically to the hard surface area. For reasons set out later that ground of appeal fails. However, the hard surface is part of the breach of planning control alleged in the notice and thus forms part of the whole development enforced against. As such, it also forms an integral element of the development for which the application for planning permission is deemed to have been made under section 177(5) of the Act. It would therefore be unjust not to consider it under the ground (a) appeal. Since the Council's objections to the merit of the hard surface are clearly set out in the reasons for

issuing the notice and in their statement of case, my consideration of it as part of the deemed application would not result in any injustice.

3. Accordingly, in order to clarify the terms of the deemed application under section 177(5) of the Act, I will correct the notice using powers available to me under section 176(1) of the Act and consider the appeal on ground (a)/deemed planning application in the terms I have set out above.

Appeal on ground (c)

4. This ground of appeal is argued solely in respect of the formation of the hard surface to the front garden, carried out by the previous property owner. An appeal on ground (c) is a claim that the matters alleged in Schedule 2 of the notice do not constitute a breach of planning control. The burden of proof in a ground (c) appeal falls to the appellant and the test of the evidence is on the balance of probability.
5. Having regard to all the photographic and other evidence before me, and from my own observations of the appeal site, it is clear that a hard surface formed from a concrete sub-base and overlaid by block paving has been laid across most of the front area of the property, with narrow planted borders, and all enclosed by the front boundary wall and gates and the two side boundaries with neighbouring properties. For the appellant it is argued that the hard surface benefits from the planning permission ("permitted development") available under Article 3 and Class F, Part 1, of Schedule 2 to the GPDO¹.
6. The Council argues it does not satisfy the Class F condition at F.2(b) which requires that –

"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 of the dwellinghouse".
7. The appellant's evidence in this regard is that the concrete sub-base was drilled with holes at frequent intervals to allow for drainage, and with a soak-away located at the north-western corner, then overlaid with a widely available proprietary type of permeable block paving, laid with a gradient sloping toward the soak-away. From my own knowledge of this type of block paving each block has a 'nibbed' design to allow surface water to pass between the blocks. Details of the construction of the hard surface area are shown in drawing (1037-020)² submitted to the Council by the previous owner as part of a (later withdrawn) planning application. Also submitted is email correspondence³ from the project architect who oversaw the works and instructed a sub-contractor to carry them out. Assuming the sub-contractor carried out the works as instructed, the email is consistent with and supports the appellant's case as to the method of construction. There is no convincing evidence which would lead me to a contrary view.
8. In considering whether condition F.2(b) is met, and noting that the first part specifically refers to "*porous*", the Government's publication on this matter, *Guidance on the Permeable Surfacing of Front Gardens* (2008) attached to the

¹ Town and Country Planning (General Permitted Development) (England) Order 2015

² Appellant's appendix 3, Council's appendix IV

³ Appellant's appendix A

Technical Guidance⁴ to the GPDO, provides useful advice. It states that planning permission is not required "...if a new or replacement driveway of any size uses **permeable (or porous) surfacing**, such as gravel, **permeable concrete block paving** or porous asphalt" (my emphasis).

9. At the site visit the appellant demonstrated the permeability of the surface by applying a continuous fast flow of water to it from a garden hose for several minutes. I saw that the water passed through the blocks fairly quickly. When the hose was finally turned off there was no pooling or surface water run-off away from the particular areas where the flow of water had been directed. Given these factors, it seems likely to me that the concrete sub-base was also drilled and the soak-away provided as described. If that were not so the block paving layer would likely have been in a poor and unstable condition, which was not the case, approximately 3.5 years after it was first constructed. Furthermore, there is no contrary evidence from the Council, for example in the form of permeability testing as part of their investigations, or records of site visits/photographs of the completed hard surface during or after periods of heavy rainfall.
10. For these reasons I find that the hard surface satisfies condition F.2(b) and, in isolation of all other considerations, would be permitted development.
11. However, it is clear from the Council's photograph of the front boundary treatment and hard surface area, taken during the construction phase, that both elements were partially completed. It is compelling evidence that both were carried out together as a single operation. There is no convincing evidence from the appellant that persuades me otherwise. Thus, I find on the balance of probability that the development was a single operation. As such, it is not permitted by any Class in the GPDO and is not permitted development.
12. The appeal on ground (c) therefore fails.

Appeal on ground (a)/deemed application for planning permission

Main Issue

13. The main issue is the effect of the hard surface, brick boundary wall, railings and iron gates on the character and appearance of the area.

Reasons

14. Policy DMP 1 of the London Borough of Brent Development Management Policies states that development will be acceptable provided, amongst other matters, it is of a siting, scale, type, materials, detailing and design that provides high levels of internal and external amenity and complements the locality. With regard to new boundary walls the Council's SPD⁵ states that high quality and long lasting materials should be used and the design should be arranged and constructed to complement the character of the rest of the street.
15. Policy DMP 12 requires that developments should provide parking consistent with parking standards in Appendix 1 to the policy, and that the removal of surplus parking spaces will be encouraged. It also requires off-street parking to preserve the character of the surrounding area, any means of enclosure, trees

⁴ Permitted Development Rights for Householders-Technical Guidance, page 48, hyperlink

⁵ Supplementary Planning Document 2, Residential Extensions & Alterations (2018)

- or other features of a forecourt or garden that make a significant contribution to the visual appearance of the area, and provide adequate soft landscaping (in the case of front gardens 50% coverage), and permeable surfaces to offset adverse visual impacts and increases in surface run-off.
16. I have not been provided with Appendix 1 to Policy DMP 12 and so cannot be sure that there is an oversupply of parking spaces in the context of the relevant parking standards. However, given the substantial size of the host property and its relatively modest parking area, any oversupply would not appear to be significant.
 17. Coverdale Road is an attractive residential street having wide pavements punctuated with some trees to both sides of the carriageway, and comprising housing and boundary treatments in a variety of different forms. At its southern end Avonhurst House is a modern flatted development with first and second floor street-facing balconies, all set behind a short landscaped communal garden area and enclosed by a long run of black metal railings and hedgerow. At the northern end of the street on one side there is a long run of tall close boarded fencing, albeit that appears to be the side boundary of the corner property on Chatsworth Road.
 18. In the middle section of the street houses on both sides are either detached or semi-detached and are of an older and more traditional construction and appearance. Boundary treatments in this middle section include low level close boarded fencing, low boundary walls with railings or hedgerow over, and solid tall hedgerow. Additionally, some of the front building elevations and front gardens/driveways of these properties, including No. 10, have been treated and redecorated so as to convey a more modernist interpretation and appearance to their traditional form.
 19. The front boundary of No. 10 comprises five 2m high brick columns separated by a sliding metal gate across a widened driveway, two low level indented brick infill panels topped with railings, and a side pedestrian gate constructed in timber with railings over. The decorative black metal arch-headed railings to the walls and gates are of uniform design and appearance across the whole frontage, as is the aged character of the brick work. Privet hedgerow at 2m high forms both side boundaries between the house and the rear of the front boundary and there are planted borders to the front of the house's two bay windows. The block paving to the hard surface area is mid-red/brown colour having a lower hue than the front boundary walling.
 20. I appreciate the Council's desire to prevent solidification of front boundaries which can result in 'fortress' like effects, thereby cutting out the contribution that a host property might make to the street scene, but I find that not to be the case here. The brick columns are well spaced apart with the remaining solid elements of the boundary treatment at low level and extending only partially across the site, while the decorative railings across the top, the design of which is mirrored in the full height and width of the vehicular access gate, allow clear visibility of the host property's design and character from along the entire frontage. Contrary to the Council's view I consider that front boundary treatment is neither dominant, excessive or visually intrusive. Rather, I find it to be an attractive and carefully designed scheme that sits well in the context of the host property and the varied character and appearance of the street scene I have previously described.

21. With regard to the hard surface area, I have already set out in the appeal under ground (c) that it is permeable. In terms of coverage, it is not clear whether the reduction in the proportion of soft landscaping over that which formerly existed is substantial. Nonetheless, there is less than the 50% requirement set by Policy DMP 12 (f) and so there is a limited degree of conflict with the policy.
22. However, the submitted pre-development photographs do not demonstrate to me that the former features of the frontage made a significant contribution to the visual appearance of the area to warrant their preservation, and hence I find no conflict with Policy DMP 12 (e). Moreover, I find that the appearance of the block paving is appropriately balanced with the provided border planting, boundary hedgerows and the materials and colour palette of the front boundary treatment and with the host dwelling. As such, it does not result in any harm to the building's setting or to the character and appearance of the area. It thereby accords with Policy DMP 12 (d).

Conclusion on ground (a)

23. Taking the development as a whole, I conclude that while there is limited conflict with criteria (f) it complies with Policy DMP 12 overall, and with the requirements of Policy DMP 1 which seeks to ensure that development provides high levels of amenity and complements the locality in terms of location, siting, layout, scale, type, materials, detailing and design. It also thereby complies with the Council's SPD guidance.
24. The appeal on ground (a) therefore succeeds.

Other matters

25. The parties refer to other hard surfaced areas and tall front boundaries in the street. However, other than in respect of No. 6, there is no clear evidence to demonstrate whether any elements of them are lawful and therefore whether they legitimately form part of the established character and appearance of the area. That notwithstanding, they are not the same as the appeal development in their design, appearance or effects, and hence they add no weight in support of allowing the appeal which I have determined on its own merits.

Formal Decision

26. It is directed that the notice be corrected in Schedule 2 by deleting the words "and iron gate" and substituting for them instead the words ",railings and iron gates".
27. Subject to the correction the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the formation of a hard surface to the front garden of the premises and the erection of a brick boundary wall, railings and iron gates on land at 10 Coverdale Road, London, NW2 4BU referred to in the notice.

Thomas Shields

INSPECTOR