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# Appeal Decision

Site visit made on 26 November 2019

**by Sarah Dyer BA BTP MRTPI MCMI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25<sup>th</sup> January 2020**

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**Appeal Ref: APP/T5150/C/19/3220793**

**25 Teignmouth Road, London NW2 4HR**

- 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 Stuart Cabb against an enforcement notice issued by the Council of the London Borough of Brent.
  - The enforcement notice, Council Reference E/18/0524, was issued on 11 December 2018.
  - The breach of planning control as alleged in the notice is without planning permission, the installation of a hard surface to the front of the premises.
  - The requirements of the notice are:  
STEP 1 Remove all hardstanding/hard surface at the front of the premises.  
STEP 2 Remove all items, debris and materials associated with the unauthorised development from the premises.
  - The period for compliance with the requirements is 4 months.
  - The appeal is proceeding on the grounds set out in section 174(2)[a], [b] and [f] of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground [a] and it has been confirmed that the fee is exempt, 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 dismissed, and the enforcement notice is upheld and planning permission is refused on the deemed planning application.

## Procedural Matter

2. The appellant made reference to an appeal decision relating to the formation of a hardstanding at 57 Teignmouth Road in his appeal submissions. The reference number and copy of the appeal decision which he submitted was incorrect. The correct appeal decision has now been submitted and the Council has been invited to comment on its relevance to this appeal. On this basis I do not consider that either party would be prejudiced by my consideration of the copy of the appeal decision, as now submitted, as part of my determination of this appeal.

## Ground (b)

3. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
4. The appellant does not dispute that a hard surface has been laid at 25 Teignmouth Road; his concerns are that the notice does not accurately

define the front of the property and that the alleged area of hardstanding should be clearly marked on the plan in sufficient detail. The Council considers that the notice meets the requirements of Planning Practice Guidance.

5. An enforcement notice must specify the precise boundaries of the land to which the notice relates. In this case although the hardstanding is at the front of the property, the land to which the notice relates is 25 Teignmouth Road. On this basis I find the notice to be correct.
6. Given the admissions of the appellant, the unauthorised development has taken place on the land and the appeal on ground (b) fails.

### **Ground (a) and the Deemed Planning Application (DPA)**

7. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

#### *Main Issue*

8. The main issue is the effect of the development on the character and appearance of the surrounding area, that forms part of Mapesbury Conservation Area (the CA), which is a designated heritage asset.

#### *Reasons*

9. The CA is characterised by rows of detached houses which are so closely spaced that they appear as regimented terraces set back from the street. On the opposite side of the road to the appeal site the individual house frontages are sufficiently wide enough to accommodate separate in and out access drives but on the same side as 25 Teignmouth Road (No. 25) there is generally a single point of vehicle access and a pedestrian path. A preponderance of low front walls, hedges and mature trees within the pavement provide a soft landscaped streetscape which is replicated on the streets running parallel to Teignmouth Road, which are also in the CA.
10. No. 25 differs from its neighbours in that it has a detached single garage to the side of the house. In combination with its position at the junction with Dawlish Road this provides a view into the frontage of No. 25 from an unusually wide angle. As a result, whilst there are low hedges directly in front of the house and to the boundary with the neighbour, the hard surfacing which has been installed, filling the space between the house/garage and the pavement, is very apparent in the street scene. This feature is at odds with the soft landscaped character and appearance of the CA.
11. The appellant says that he replaced the gravel and stones which were previously on the site because they were making access difficult. The appellants submissions include details of the approved garden layout and images of the gravel and stones at Appendix 5. This shows that the gravel and stones did not have such a harsh impact on the street scene as the hard paving now has. Furthermore, there is no evidence before me to suggest that the hard-paving solution was the only one which could have resolved the appellants concerns regarding the safety and functionality off the gravel and stones.

12. The appellant also notes that the extent of hard surfacing would be directly comparable with the area which had been laid to gravel and stones, subject to the installation of a planting bed adjacent to the front window. Whilst a planting bed as described would introduce a natural element close to the house where there is none at present and this is a feature of other front gardens in the street, this would not overcome my concerns regarding the overall extent and appearance of the hard surfacing.
13. My attention has been drawn to the Council's document SPG5 Altering and Extending your Home (SPG5), which the appellant says was in use when the previous plan for the frontage, which incorporated the gravel and stones was approved. He says that SPG5 refers to the maintenance of a 50%/50% balance between soft and hard landscaping. I note that a similar recommendation is made in the Council's document Residential Extensions and Alterations SPD2 (2018) (SPD2) which also refers to a 50/50 balance, and in the Mapesbury Conservation Area Design Guide (the CA Design Guide).
14. There is no evidence to contradict the appellants assertion that the approved layout for the front garden, which incorporated the gravel and stones extended across a much larger proportion of the frontage than 50%. However, in itself this does not render the extent of coverage by the hard surfacing acceptable because it does not outweigh the harm that I have found in terms of the effect of the use of this new material on the character and appearance of the street scene and the CA.
15. I conclude that the installation of a hard surface to the front of the premises has a harmful effect on the character and appearance of the surrounding area, which forms part of the CA. The development is, therefore, contrary to Policies DMP1 and DMP7 of the London Borough of Brent Development Management Policies (2016) which, jointly, require development to conserve or enhance the significance of heritage assets and that proposals affecting heritage assets should reinforce the street scene and frontages and contribute to local distinctiveness through, amongst other things the use of appropriate materials. For similar reasons, the development would not accord with SPD2 or the CA Design Guide.
16. On the basis of the appellants comparisons between the approved layout and the existing hardstanding he considers the scheme for the site frontage which was approved in 2014 to be a viable fall-back position. However, that permission has already been implemented and is therefore spent as each planning permission authorises a separate act of development once. As a result of the Article 4 Direction any new hardstanding would need planning permission. Whilst the determination of such an application would be a matter for the Council, they would take the SPD2 and the CA Design Guide into account, both of which postdate the 2014 consent. In this context there is no certainty that planning permission would be granted for the previous scheme and it does not, therefore represent a viable fall-back position.
17. The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. As a consequence of its design and extent, the hard surfacing has a harmful impact on the Conservation Area. However, I find that the harm would be less than substantial.

18. Paragraph 196 of the National Planning Policy Framework directs that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal. In this case, given the absence of any public benefits the harm to the designated heritage asset that I have found in this instance is not outweighed by such benefits.

*Other Matters*

19. My attention has been drawn to an appeal decision which was made in respect of the formation of a hard surface at 57 Teignmouth Road (Ref: APP/T5150/C/09/2096617 and 2096622) (No. 57). In making his decision the Inspector in that case gave weight to the unsatisfactory appearance of the site frontage prior to works being carried out which comprised crazy paving and he was also persuaded that the particular occupants of the site would have difficulty in maintaining a hedge and grassed area. He made an on-balance decision to allow the hard surface to remain in that case. In relation to the current appeal there are no similar arguments prayed in favour of the retention of the hard surface.
20. No. 57 is not in the same part of the street as the appeal site and given its more limited frontage it has not significantly altered the overall character and appearance of the CA. Whilst I have had regard to the appeal decision in relation to No. 57, it does not outweigh my concerns regarding the impact which the appeal scheme has on the site context.
21. The appellants argue that the gravel and stones which were on the site were less permeable than the block paving. However, there is no evidence before me to suggest that the previous treatment to the frontage resulted in flooding or any other adverse effects. On this basis, any improvement to the permeability of the material does not weigh in favour of the development nor does it outweigh the harm that I have found in terms of its appearance.

*Conclusion on ground (a) and the DPA*

22. For the reasons given above, I conclude that the appeal on ground (a) should fail and the DPA should be refused.

**Ground (f)**

23. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
24. The appellant considers that the requirements of the notice exceed what is necessary to remedy the only breach which he describes as the absence of a plant bed surrounding the front bay window. In this case the notice has been issued to remedy an injury to amenity, namely the effect on the CA. I do not find that the installation of a planting bed would overcome the harmful impact of the paving on the CA bearing in mind its extent and contrasting appearance in comparison with other frontages in the street. It follows that I do not find that there is an obvious alternative that would overcome the planning difficulties at less cost or disruption than total removal of the paving.

25. For the reasons set out above, I conclude that the appeal on ground (f) should fail.

**Conclusion**

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

*Sarah Dyer*

Inspector