
Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2020

Appeal Ref: APP/A5270/C/19/3223176
87 Corringway, Ealing, London W5 3HD

- 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 Sanjay Gupta against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 24 January 2019.
 - The breach of planning control as alleged in the notice is: The installation of hardstanding to the front garden (outlined and hatched in black on the attached plan).
 - The requirements of the notice are: A. Remove the unauthorised hardstanding (hatched black on the attached plan) from the front garden; and B. Remove all resultant debris and dispose of it in a lawful manner.
 - The period for compliance with the requirements is: Within three months from the date the enforcement notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is dismissed and the Enforcement Notice (EN) is upheld.

Costs

2. An application for costs made by the Council against the appellant is the subject of a separate decision.

Procedural Matters

3. There is no deemed planning application to consider. The grounds of appeal before me are legal grounds where there is no place to consider matters of planning merit. As such, I cannot take account of issues such as the hardstanding being necessary for disabled person access and that it visually complements the appearance of the building and the surrounding area.
4. In an email to the Planning Inspectorate (PINS) in May 2019, which contained information related to the appeal, the appellant referred to an appeal under s174(2)(f) of the 1990 Act. The appellant has also referred to a ground (f) appeal at the final comments stage. However, this was not a ground originally pleaded. Also, the letter sent by PINS to the appellant on 19 November 2019

was clear about the grounds of appeal, which did not include ground (f). The Council has also proceeded on the basis that there is no ground (f) appeal. Moreover, the fact referred to by the appellant in his email and final comments is based on the issue of disabled access to the house, which is a matter of planning merit that, for the reason already given, I cannot consider. There are no facts advanced by the appellant relevant to a ground (f) appeal. As such, I shall not consider one.

5. In legal grounds of appeal the burden of proof to make out their case rests with the appellant.

The ground (b) appeal

6. The basis of this ground of appeal is that the matter referred to in the EN has not occurred. As a matter of fact, there is a hardstanding to the front garden of the appeal property in the position indicated on the plan attached to the EN. This is also very clearly shown in the photographs submitted by the Council. Consequently, this ground of appeal cannot succeed.

The ground (c) appeal

7. S55 of the 1990 Act defines development as including building or other operations. The construction of the hardstanding was clearly a building operation and is not excluded from the definition of development because in the appellant's opinion it is in keeping with the area. Nor does the hardstanding fall outside the definition of development because it was for the maintenance, improvement or other alteration of building or that it does not materially affect the external appearance of a building. To my mind, the hardstanding is not a building within the meaning of s55.
8. Subject to certain provisions not relevant in this case, s57 of the 1990 Act states that planning permission is required for the carrying out of any development of land. The appellant asserts that the hardstanding was permitted development.
9. However, there is an Article 4 direction in place across the Hanger Hill (Haymills) Estate Conservation Area, which the appeal property is within, that has removed rights to provide within the curtilage of a dwellinghouse a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such, or the replacement in whole or in part of such a surface under Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015. Consequently, the hardstanding needs express planning permission from the local planning authority. That has not been granted.
10. Against this background, there has been a breach of planning control. As such, the ground (c) appeal must also fail.

The ground (d) appeal

11. S171B(1) of the 1990 Act specifies that where there has been a breach of planning control consisting in the carrying out without planning permission of building or other operations on land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Therefore, the appellant must show that, on the balance of probability, the hardstanding was substantially complete

for four years prior to the EN being issued. The hardstanding would therefore have needed to be substantially complete by at least 23 January 2015 (hereinafter referred to as the material date).

12. It is acknowledged that, based on a picture of the front of the appeal property taken in 2008, there was a driveway leading to the garage and a central pathway to the front door of the house. I have also noted that in more recently submitted pictures there was paving at the front of the house linking the path to the driveway. However, the EN does not attack the driveway as is clearly shown on the plan attached to the EN. Also, it is not disputed that the original areas of paving have been removed when installing the much more extensive hardstanding that now covers most of the front garden.
13. An aerial image of the appeal property taken some time around August to September 2016, after the material date, shows a largely soft landscape garden in contrast with another aerial photograph from 2019 showing the light-coloured hardstanding in place. Also, the Council has supplied a photograph of the front of the house from March 2017, around the time that a complaint was received about the works, which appears to show that work on the hardstanding was still in progress, albeit it was largely in place. With this evidence in mind, it seems very likely that the hardstanding was laid between August/September 2016 and by around March 2017 which does not demonstrate, on the balance of probability, that it was substantially complete by the material date.
14. Therefore, the ground (d) appeal also fails.

Other Matters

15. I note that the appellant disputes receiving a letter sent by the Council on 13 June 2018. However, that is a matter between the appellant and the Council away from this appeal. It has no bearing on the appeal outcome. No other matters raised outweigh my earlier findings.

Conclusion

16. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Gareth Symons

INSPECTOR