



## Appeal Decision

Site visit made on 9 March 2020

**by M Savage BSc (Hons) MCD MRTPI**

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

**Decision date: 14 April 2020**

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**Appeal Ref: APP/T5150/C/19/3242613**

**Flats 1-3. 153 Chatsworth Road, London NW2 5QT**

- 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 Mrs Lena Smith against an enforcement notice issued by the Council of the London Borough of Brent.
  - The enforcement notice was issued on 31 October 2019.
  - 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 unauthorised development")
  - The requirements of the notice are:  
Step 1 Remove the hard surface to the front of the premises  
OR  
Step 2 Implement the planning permission reference 19/1052, ensuring that all approved plans and conditions associated with this permission are complied with.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (g) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion of '3' months in relation to the time period for compliance at Schedule 5 and the substitution of '6' months as the period for compliance. Subject to this variation the enforcement notice is upheld.

### Procedural Matter

2. Although the appellant has not appealed under ground (g), since the appeal was lodged, the Covid-19 outbreak has had a profound effect on all areas of life in the UK. S176(1)(b) of the Act gives an Inspector appointed by the Secretary of State wide powers to vary the terms of an enforcement notice, provided it does not cause injustice. In light of this, the views of the appellant and Council were sought to establish whether the compliance period should remain unchanged or a different compliance period should be specified. I have taken these views into account in reaching my decision.

### Ground (b)

3. An appeal on ground (b) is made on the basis that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The onus of proof is on Mrs Lena Smith to show that some or all of the alleged matters had not in fact occurred by the time the notice was issued, on the balance of probabilities.
4. The enforcement notice alleges the formation of a hard surface to the front garden of the premises. It seems that the appellant believes that no breach has

occurred because the hard surface has been systematically perforated and has carbon sink credentials similar or superior to turf. However, it is not disputed that a hard surface has been constructed to the front of the premises. Accordingly, the breach of control alleged in the enforcement notice has occurred as a matter of fact and the appeal on ground (b) must therefore fail.

### **Ground (c)**

5. An appeal on ground (c) is made on the basis that those matters (if they occurred) do not constitute a breach of planning control. Consideration of ground (c) involves whether the matters constitute development and if so, whether the development already benefits from a grant of planning permission.
6. The Council states that when the breach of planning control was established in October 2018, it advised the appellant to regularise the situation via a planning application. The appellant submitted a planning application, reference 19/1052, which was granted on 23 May 2019 for alterations to front yard to include permeable features and drainage channel, and installation of wrought iron gates to frontage.
7. Condition 2 attached to the permission required that the development permitted be carried out in accordance with approved drawings 153CHAT/185/01 and 153CHAT/185/02. Drawing number 153/CHAT/185/01 shows the 'existing driveway', which is hard surfaced with limited soft landscaping at the sides. These are the works that the Council sought to ensure were regularised through the planning application. Drawing 153/CHAT/185/02, shows the proposed works which are approved by the planning permission. Drawing 153/CHAT/185/02 comprise a significantly greater proportion of soft landscaping compared with 153/CHAT/185/01.
8. The Council visited the property on 27 June 2019 and 3 October 2019 and state that no steps had been taken to implement the planning approval and remedy the breach of planning control. Photographs submitted by the Council show an area of soft landscaping which is significantly less than the amount of soft landscaping proposed in plan 153/CHAT/185/02. During my visit the extent of soft landscaping appears similar to that which is shown in the Council's photographs and which are shown in drawing number 153/CHAT/185/01.
9. It is not disputed that the works constitute development. What is disputed is, given the above, whether permission has already been granted for the development. The appellant's position is that planning permission has been granted by the Council, using ambiguous language relating to soft landscaping and "similar". Since planning permission has been granted for alterations to the front yard to include permeable features and drainage channel and installation of wrought iron gates to frontage, it is necessary for me to consider any differences between the works and the approved plans, and the significance of such differences.
10. Soft landscaping on the plan<sup>1</sup> is identified as 'with turf or equivalent' and all paver slabs are shown to have drill holes for drainage. The appellant asserts that systematically perforated concrete paving is similar to, and could constitute, soft landscaping. Whilst I have not been provided with a definition of soft landscaping, in my experience, it is typically used to describe natural

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<sup>1</sup> 153/CHAT/185/02

features, such as planting. This appears consistent with the details used on the approved plans.

11. Soft landscaping can have both a functional and aesthetic function. I have no substantive evidence that the perforated slabs perform a similar drainage function to turf, particularly as slabs would be likely to cause compaction of the soil below which would affect the efficiency of the drainage. Furthermore, I do not agree that it is similar aesthetically to turf, which is naturally occurring and gives an area a more verdant character.
12. The appellant asserts that the hard surface is considerably more aesthetic than what it replaced and that the hard surface is non-slip and easy to maintain. However, the appellant has not appealed under ground (a) and so the planning merits are not before me and so I am unable to take these matters into account.
13. The works which have been carried out comprise substantially less soft landscaping than that shown on 153CHAT/185/02 and are therefore significantly different to the works approved under planning permission 19/1052.
14. Thus, I do not consider that the works which have been carried out have already been granted planning permission as there is a substantial deviation from the approved plans. Consequently, the appeal under ground (c) fails.

### **Ground (g)**

15. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. Since the appeal was lodged, the Covid-19 outbreak has had a profound effect on all areas of life in the UK. The appellant has raised concern with bringing contractors onto the appeal site to carry out works whilst social distancing rule apply.
16. The Council advise that, in light of the pandemic, it considers it reasonable that an extra 3 months be added on to the existing compliance period. The Council has further advised that if it transpires that further time is needed because it (the pandemic) carries on longer than 3 months, the Council can decide to use its own powers to extend the compliance period further.
17. In light of the above and, given the likelihood that compliance with the enforcement notice would require a builder to carry out some of the works, I consider extending the compliance period for 3 months is reasonable. I shall therefore vary the terms of the enforcement notice accordingly.

### **Conclusion**

18. For the reasons given above I conclude that a reasonable period for compliance would be six months. I am varying the notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

*M Savage*

INSPECTOR