



Appeal Decision

Site visit made on 2 September 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 30 September 2020

Appeal Refs: APP/B5480/C/20/3247560 & APP/B5480/C/20/3247561 Land at Cynthia, Orange Tree Hill, Havering-Atte-Bower RM4 1PB

- 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 appeals are made by Mr John Warrington and Mrs Kerrie Noller respectively against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 24 January 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of hard surfacing within the front garden.
 - The requirements of the notice are to:
 - (i) Remove, in its entirety, the hard surface as marked hatched in black on the attached plan to the front of the property and remove all waste materials.
 - (ii) Restore the garden to the condition prior to the raised concrete parking space being constructed.
 - The period for compliance with the requirements is, for (i) 3 months after the date the Notice takes effect and, for (ii) 4 months after the date this Notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended, and falls to be considered.
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Formal Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Procedural Matter

2. Appeal APP/B5480/C/20/3247561 is the lead appeal in this instance, with the requisite fee paid for the deemed planning application under the ground (a) appeal here lodged. Appeal APP/B5480/C/20/3247560 relates only to the ground (c) appeal lodged. In this respect I am treating the representations made by the respective appellants on this ground as identical.

Background

3. In October 2018 planning permission was refused (ref P1260.18) for the 'retention of existing hardstanding to front driveway'. As a result the appellant was subsequently requested by the Council to remove the development. However, the hardstanding, which involved the raising of land levels, remained in place.
4. Ultimately, the Council saw it expedient to issue an enforcement notice requiring for the hardstanding's removal.

The Appeals on Ground (c)

5. An appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof on matters of fact is on the appellant, and is on the balance of probabilities.
6. Ground (c) assumes the fact of the original development as it occurred at the time of the enforcement notice's issue, so it can only succeed on this basis if that original development does not now amount to a breach of planning control due to a change in the planning control situation.
7. Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) allows for, subject to certain provisos, the laying of hard surfaces within the curtilage of a dwellinghouse. One such proviso is that, where the hard surface would be situated on land between a wall forming the dwelling's principal elevation and the highway, if the area of ground covered by the hard surface measures more than 5 sqm the surface should be made of porous materials, or an arrangement is made to direct its run-off water to a permeable or porous surface within the curtilage.
8. In this particular instance it is clear that the central hard-surfaced area identified substantially exceeds the 5 sqm threshold, and it is also readily apparent from the photographs submitted by the Council, that the hardstanding laid was concrete. There is no suggestion otherwise, and concrete, of course, is not a porous material. However, even if it was argued that the dwelling's front facing façade was not the principal elevation in this particular instance, then Class E of the same part of the GPDO also directly apply to the development carried out.
9. At my site visit I observed that the majority of the strip has been grassed over. However, I also noted that the works carried out have significantly raised the land levels. This was necessary to allow for the creation of a flat surface as the front garden area slopes down significantly towards the house. The height increase is readily apparent from the retaining walls which abut the sloping driveway areas on either side of the strip. Class E, as referred to, which is concerned with both buildings and enclosures incidental to the enjoyment of the dwellinghouse, under its proviso E.1(h), specifically excludes "raised platforms" from a householder's permitted development entitlement. This is effectively what has been constructed here.
10. The development undertaken therefore constitutes 'development' within s55 of the 1990 Act as amended which, in failing to satisfy the limitations of the GPDO, requires the benefit of planning permission. Since planning permission has not been granted for the development it is, in effect, a breach of planning control. The appeals on ground (c) therefore fail.

The Appeal on Ground (a) and the deemed planning application (DPA).

Main Issue

11. The main issue is the development's effect on the character and appearance of the area, with regard to the site's location in the Metropolitan Green Belt and also the locally designated Havering Ridge Area of Special Character (AOS).

Reasons

12. Although the site falls within the Green Belt it actually forms part of a row of dwellings set back from the highway. Also, as the road climbs northwards the local designation as an AOS becomes significantly more pronounced.
13. All development in the Green Belt, be it uses of land or operational development, is inappropriate for the purposes of the National Planning Policy Framework (the Framework) unless it accords with the exceptions listed in paragraphs 145 and 146 of the document. The works carried out constitute an engineering operation, which is one of the exceptions mentioned in the latter. Also, the development, in its contextual setting, is limited in extent and not, in my opinion, to the degree that it could be reasonably seen to adversely effect the openness of the Green Belt.
14. As such, I am not convinced that the development is materially harmful to the open and spacious character of the Green Belt. Further, given its context and nature, neither do I consider that the AOS is adversely affected by the development.
15. At my site visit, I noted that other nearby properties do have partially hard-surfaced front curtilage areas, although the respective grassed verges abutting the back edge of the footway have been retained. I have mentioned that, subsequent to the enforcement notice being issued, the majority of the central strip at the appeal property has been grassed over, and this would assist with surface water run-off. However, the DPA can only relate to the development, as enforced against, namely the installation of the hard surfacing.
16. The appellant says that the "raised patio" would accommodate benches, a water feature, and ornamental flower pots. The proposed site layout plan (ref 522/02.2) accompanying the application previously made for the retention of the hardstanding (ref P1260.18) showed an area for planting at the far end of the strip, although this appears to have since been paved. There is no scheme before me with any illustrative site plan to show the appellant's latest proposals.
17. In the circumstances I am required to determine the DPA in respect of the development alleged by the Council at the time the enforcement notice was issued. This expanse of hard-surfacing, coupled with the driveways on either side, would have an unduly harsh appearance and be visually detrimental to the street scene. The development would not meet the design objectives of policy DC61 of the Council's Development Control Policies Development Plan Document (DPD).
18. I therefore conclude that the development is harmful to the character and appearance of the area, contrary to the objectives and requirements of DPD policy DC61 and also relevant guidance within paragraph 127 of the National Planning Policy Framework. For the above reasons, and having had regard to all matters raised, the application for planning permission deemed to have been made under s177(5) does not succeed and the appeal is dismissed.

Timothy C King

INSPECTOR