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## Appeal Decisions

Site visit made on 8 March 2021

**by D Hartley BA (Hons) MTP MBA MRTPI**

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

**Decision date: 18 March 2021**

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**Appeal A: APP/T5150/C/20/3249843**

**Appeal B: APP/T5150/C/20/3249844**

**99 Dartmouth Road, London NW2 4ER**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - Appeal A is made by Mrs Kirsty McLean and Appeal B is made by Mr Nicholas McLean against an enforcement notice issued by the Council of the London Borough of Brent.
  - The enforcement notice, numbered E/19/0706, was issued on 28 February 2020.
  - The breach of planning control as alleged in the notice is without planning permission, the construction of a hardstanding to the front of the premises.
  - The requirements of the notice are (i) remove the unauthorised hardstanding from the front of the premises and (ii) remove all items, materials and debris arising from the removal of the unauthorised hardstanding from the premises and ensure that the surface material comprises soil/shrubs or turf.
  - The period for compliance with the requirements is 3 months.
  - Appeal A is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Appeal B is proceeding on the grounds set out in section 174(2) (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period in relation to Appeal B, 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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### Decisions

**Appeal A: APP/T5150/C/20/3249843**

1. It is directed that the enforcement notice be varied by deleting the words '*and ensure that the surface material comprises soil, shrubs or turf*' in Step 2 of Schedule 4. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

**Appeal B: APP/T5150/C/20/3249844**

2. It is directed that the enforcement notice be varied by deleting the words '*and ensure that the surface material comprises soil, shrubs or turf*' in Step 2 of Schedule 4. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

### Procedural Matters

3. Prior to the determination of this appeal, the London Plan 2021 was published. The main parties were afforded an opportunity to comment on the implications

of the publication of this development plan in respect of the determination of the ground (a) appeal. Given the publication of this development plan, the policies in the London Plan 2016, as referred to in the reasons for issuing the enforcement notice, are no longer applicable to the determination of the ground (a) appeal.

4. Reference has been made by the Council to the emerging Brent Local Plan 2019. Given the status of this emerging plan, I have afforded it only limited weight as a material planning consideration as part of the determination of the ground (a) appeal.

### **Appeals on ground (e)**

5. The appeals on ground (e) is that copies of the notice were not served as required by s172 of the Act.
6. The appellants claim that the plan attached to the notice includes land/hardstanding that lies within the curtilage of No 101 Dartmouth Road in so far that it extends as far as the projecting front bay window of this neighbouring property. It is claimed, therefore, that a copy of the notice should have been served either on the owner, occupier and/or other person with an interest in such a property.
7. The black line on the plan attached to the notice is drawn thickly and so it is at least possible that there could be some overlap with land belonging to No 101 Dartmouth Road. However, the plan should be read alongside the notice which has a site address of '*99 Dartmouth Road, London, NW2 4ER*' and is referenced as '*the premises*'. The allegation in the notice refers to the '*premises*' and the requirements of the notice also refer to the premises. The reasons for issuing the notice makes reference to the '*property*', i.e. in the singular.
8. Given the above, it is clear that the notice is directed at the breach of planning control relating solely to land associated with No 99 Dartmouth Road. Neither the breach of planning control, nor the requirements of the notice, relate to land at No 101 Dartmouth Road. The Council has confirmed that it has separately opened an enforcement file in respect of No 101 Dartmouth Road.
9. On the evidence that is before me, I conclude that the notice was properly served in accordance with S172 of the Act. Therefore, the ground (e) appeals fail.

### **Appeals on grounds (b) and (c)**

10. The appeals on ground (b) are made on the basis that the matters comprising the alleged breach of planning control have not occurred. The appeals made on ground (c) is that the matters alleged do not constitute a breach of planning control. There is some overlap in terms of the consideration of these grounds of appeal and so I have considered them together.
11. The appellants claim that the breach of planning control has not occurred in so far that a hardstanding was not constructed to the front of the premises. Instead, the appellants claim that the works undertaken involved the maintenance and repair of an existing hardstanding following subsidence caused by the Council's tree. It is stated that repair methods were initially attempted involving tie rods, heli-fix bars and resin pressure grouting and that these failed due to the extent of subsidence caused by the tree roots,

necessitating *'compacting some of the existing slab and removing the excess to enable fresh concrete to be recast on the hardstanding'*.

12. Section 55(1) of the Act states that development means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. As a matter of fact and degree, the evidence indicates that the hardstanding on the site was a pre-planned engineering operation involving the removal of the slab following compaction and the laying of fresh concrete. This work was undertaken by a contractor, Metro Projects Design & Construction Solutions, and a degree of skill would have been necessary to carry out the substantial operations.
13. Taking into account the evidence that is before me, including the Council's date stamped 'before' and 'after' photographs, I find that the works went well beyond the act of repair or maintenance and instead amounted to an engineering operation involving the formation of a new concrete hardstanding area on top of a rubble sub-base. Hence, the breach of planning control did constitute development by virtue of Section 55(1) of the Act.
14. Given my finding that the breach of control amounts to an engineering operation, I do not therefore agree with the comment made by the appellants that the hardstanding would otherwise be a structure, and hence a building, with reference to Section 336 of the Act. Even if one were to take the view that the hardstanding was a 'building' and that the work carried out on the site was *'for the maintenance, improvement or other alteration of any building'*, which I do not accept on the basis that as a matter of fact and degree a new hardstanding has been formed, there is nevertheless no dispute between the parties that the concrete has a very different colour/appearance to the surface material which was on the land previously. To that extent, and in respect of Section 55 (2) (ii) of the Act, had the hardstanding been a 'building', I would have found it to have materially affected the external appearance of the said 'building' and therefore would have taken the works to have involved the development of land.
15. The appellants claim that the hardstanding was 'implicitly' approved as part of planning permission 07/3323. The description of development for that approved planning permission is for the *'retention of and completion of garden boundary wall to the front of the dwellinghouse...'*. The planning permission does not make any reference to a new hardstanding to the front of the premises. Furthermore, approved drawing No PC/196/PA 2 does not show any new hardstanding details to the front of the premises. I do not therefore agree with the appellant that planning permission has been granted for the breach of planning control.
16. The appellants have included a copy of an Article 4 Direction for the Mapesbury Conservation Area (CA) dated 13 November 1987. The appeal premises fall within the Article 4 Direction Area as outlined in schedule B. The Direction removes certain types of permitted development that can take place with reference to the Town and Country Planning General Development Order 1977 and specifically the *'construction within the curtilage of a dwelling house of a hardstanding for vehicles'* and *'the formation, laying out and construction of a means of access to a highway'*. The appellant questions whether this Direction is in force in so far that it is not clear that it was expressly approved by the

Secretary of State (SOS). The appellant's copy of the Direction does not appear to include a signed authorisation from the SOS.

17. However, the Council has provided a full copy of the Direction as part of its appeal statement. This does include a signature from the SOS and indeed the Council states that the Direction '*has been approved by the Secretary of State in November 1987*'. On the evidence that is before me, I am satisfied that the Article 4 Direction was properly authorised and that it does continue to have effect. Therefore, planning permission was required for the breach of planning control.
18. On the balance of probability, and taking into account the evidence that is before me, I conclude that the alleged breach of planning control has occurred. Therefore, the ground (b) appeals fail. I conclude that the breach of planning control does amount to development and that planning permission is required for it. Therefore, the matters alleged do constitute a breach of planning control. Therefore, the ground (c) appeals fail.

### **Appeals on ground (d)**

19. In an appeal made under ground (d), it is claimed that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The burden of proving relevant facts is on the appellants, and the relevant test of the evidence is on the balance of probability.
20. I have already concluded that the construction of the new hardstanding did not amount to an act of maintenance or repair. As a matter of fact and degree, a pre-planned engineering operation took place in October 2019 amounting to development requiring planning permission.
21. Taking into account the evidence that is before me, including the Council's photographs and the letters to the Council from Metro Projects Design & Construction Solutions, and on the balance of probabilities, I find that the breach of planning control was carried out and completed within the last four years (i.e. in October 2019). Therefore, at the date when the notice was issued the development was not immune from enforcement action and hence it was not too late for the Council to take enforcement action. Therefore, the ground (d) appeals fail.

### **Appeal on ground (a) and the deemed planning application**

22. The appeal is made on ground (a) of s174 of the Act that planning permission ought to be granted in respect of any breach of planning control which may be constituted by the matters stated in the notice.
23. I have considered the reasons for issuing the notice, as well as the Council's appeal statement, and the main issues in respect of the ground (a) appeal are whether the breach of planning control has (i) preserved or enhanced the character or appearance of the Mapesbury Conservation Area (CA) and (ii) whether it has resulted in an unacceptable risk of surface water flooding in the area.

### *Conservation Area*

24. This part of the CA is characterised by mainly large residential properties which are positioned in a geo-metric pattern and with a consistency of building materials and styles, particularly on the appeal site side of Dartmouth Road, and including imposing and architecturally impressive double storey projecting front bays and other architecturally decorative features.
25. Dartmouth Road is tree lined and in the main the deep forecourts to the properties include consistent low boundary brick walls and are partly landscaped. There is some hardstanding to some of the forecourts, including for the parking of vehicles, but the surface materials are generally in muted tones and so do not appear harsh or stark in the wider urban setting. The forecourt landscaping and street trees provide green and soft additions to the otherwise built form in this part of the CA. Collectively, the aforementioned attributes add positively and distinctively to the overall significance of the CA as a whole.
26. The evidence before me indicates that there was a concrete hardstanding on the site previously. However, this was finished in a muted tone and was not therefore seen as a striking and out of keeping addition when viewed in the street-scene. In contrast, the breach of planning control has a very smooth, bright and harsh appearance and owing to this, as well as its very significant footprint, the development looks materially out of place in the wider environment. To the passer-by, its out of place appearance is very apparent when viewed between the two open access points and over the relatively low front boundary wall. This harmful impact is particularly apparent given the absence of any significant frontage landscaping which, in the main, is a prevalent and positive characteristic in this part of the CA.
27. Given the above considerations, I do not consider that the breach of planning control has preserved the character and appearance of the CA. The hardstanding has a very bright and smooth surface and covers an extensive area. There is no evidence that this smooth and bright surface would discolour or weather to achieve a more muted tone within a short period of time. In the context of paragraph 196 of the National Planning Policy Framework (the Framework) the harm caused by the breach of planning control has led to less than substantial harm to the significance of the CA.
28. I acknowledge the personal and health circumstances of one of the occupiers and that the breach of planning control ensures smooth and easy access to the front and side of the premises. However, in the context of paragraph 196 of the Framework this is a private benefit. There are no identified public benefits that would outweigh the less than substantial harm caused to the significance of the CA.
29. The appellant has suggested that sandstone slabs or resin bonded gravel could be applied to the hardstanding. I have not been provided with any detailed information relating to such suggestions or indeed whether any such proposals could take the loading of vehicles without breaking up. In addition, the concrete hardstanding has been levelled flush with the adjacent pavement and adding another surface would increase its height and result in an uncharacteristic step between the pavement and the driveway. Such a solution would not be acceptable from an appearance point of view: it would not preserve the character and appearance of the CA. In any event, this sort of

engineering operation would effectively involve the formation of another hardstanding area and the ground(a) appeal relates to the breach of planning control and not to a materially different from of development.

30. I acknowledge that that there was previously hardstanding on the site. In this regard, I afford the conflict with the Council's Mapesbury Conservation Area Design Guide 2018 (Design Guide) limited weight and which states '*in exceptional circumstances the Council may grant permission for a standard off-street parking space where at least 50% of the total front garden area will be retained and is suitably landscaped with soft planting features*' only limited weight in the overall planning balance. Nevertheless, the absence of any significant landscaping to the forecourt of the premises has the effect of drawing even greater attention to what is a non-traditional large, bright and harsh hardstanding in the wider CA setting.
31. For the above reasons, I conclude that the breach of planning control does not accord with the design, character and heritage requirements of policies DMP1 and DMP7 of London Borough of Brent Local Plan Development Management Policies 2016 (DMP); Policies D3 and HC1 of the Published London Plan 2021; Policies BD1 and BP6 of the emerging Brent Local Plan 2019; the Design Guide and chapters 12 and 16 of the Framework. The council has referred to Policy D1 of the London Plan 2021, but I do not consider that this is directly relevant to the consideration of this main issue as it essentially relates to the preparation of development plans and in particular area assessments.

#### *Surface water flooding*

32. The Council has raised concern that the breach of planning control has resulted in surface water flooding in the area on the basis that '*the lack of soft landscaping and the use of non-permeable material increases the risk of surface water flooding and putting pressure on the underground drainage network*'. However, I was able to see on my site visit that vehicular crossovers were in place and that they were provided with 'ACO' drainage channels. The Council has not disputed the appellant's claim that there are '*30mm underground pipes that direct surface run-off water to the porous flowerbed behind the consented front wall*'. I would also add that the evidence indicates that prior to the breach of planning control there was not materially more landscaping on the site.
33. Based on the evidence that is before me, I do not therefore consider that there is evidence that the development has, in relative terms, resulted in any adverse effect on surface water flooding in the area, or that any unacceptable pressure has been placed on the underground drainage network. To this extent, I do not consider that the breach of planning control conflicts with the surface water flooding requirements of Policy DMP9A of the DMP.

#### *Other considerations*

34. In this instance, the Council has made it clear that it would support some form of hardstanding to the front of the premises. Indeed, there is policy support for some form of in-keeping and well-designed hardstanding area to the front of the property. Therefore, and notwithstanding the personal and health circumstances of one occupier, I find that a refusal of planning permission is a legitimate and proportionate response to the need to protect the CA in the public interest. In reaching this view, I have had due regard to the Public

Sector Equality Duty contained in section 149 of the Equality Act 2010. A refusal of planning permission does not mean that there would be no potential to achieve an appropriate and flat access for the said appellant.

35. The appellant has indicated that the previous hardstanding on the site was damaged as a result of the Council's highway tree. I do not know if any damage was caused a result of this tree but, in any event, that would be a civil matter to be considered separately from the determination of this appeal.

*Planning balance and conclusion – ground (a) appeal*

36. While there is no evidence that the breach of planning control has or would cause harm from a surface water flood risk point of view, the development has not preserved the character and appearance of the CA. This is a matter of overriding concern and is not outweighed by any of the identified other considerations. I therefore conclude that the proposal would not accord with the development plan for the area when considered as a whole and that there are no material considerations which would outweigh the conflict with that development plan. Therefore, the ground (a) appeal should fail.

**Appeals on ground (f)**

37. An appeal on ground (f) makes the claim that the steps required by the notice to be taken 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.
38. The purpose of the notice is to remedy the breach of planning control. Step 1 of the notice requires the removal of the hardstanding from the front of the premises. In doing so, Step 2 requires the removal of all items, materials and debris arising from the removal in Step 1. This is a necessary requirement to remedy the breach of planning control.
39. The notice requires the resultant surface material to be '*soil, shrubs or turf*'. I do not consider that it is necessary for Step 2 to include the words '*and ensure that the surface material comprises soil, shrubs or turf*' as this would exceed what is necessary to remedy the breach of planning control. Furthermore, and, in any event, the removal of the hardstanding area and all associated items, debris and material from the land, would likely leave a surface comprising soil.
40. There are therefore lesser steps available that would remedy the breach of planning control. I shall vary the requirements of the notice so that the words '*and ensure that the surface material comprises soil, shrubs or turf*' are deleted from Schedule 4 Step 2 of the notice. In doing so, I am satisfied that this would not cause any injustice to any interested party. To this extent, the appeals on ground (f) succeed.

**Appeals on ground (g)**

41. The appeals on ground (g) are that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
42. The notice states that the requirements must be complied with by no later than three months from the date that the notice takes effect. The appellants request is for a period of twelve months.

43. The appellants have not substantiated their view that a period of twelve months is needed to comply with the requirements of the varied notice. I am satisfied that a period of three months would reasonably enable the appellant to carry out all of the necessary works and to fully comply with all of the requirements of the varied notice.
44. Should the appellants want to consider alternative works or development on the site, then this could be discussed with the local planning authority as a separate process to the requirements and timescales stipulated in the notice.
45. On the evidence that is before me, I consider that three months is an adequate period to ensure compliance with the requirements of the notice. For the reasons outlined above, the appeals on ground (g) fail.

## **Conclusions**

### **Appeal A: APP/T5150/C/20/3249843**

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

### **Appeal B: APP/T5150/C/20/3249844**

47. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice as varied.

*D Hartley*

INSPECTOR