



Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2021

Appeal Ref: APP/T5150/C/20/3249450

96 Ravenscroft Avenue, Wembley London HA9 9TG

- 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 Hasanin Baraka against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 12 February 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the formation of a bin store structure and the erection of a hard standing to the front side of the premises.
 - The requirements of the notice are:
 - Step 1 Remove the hard standing to the front side of the premises as shown hatched in black on Plan A attached to the notice.
 - Step 2 Remove the bin store structure from the front of the premises.
 - Step 3 Remove from the land all resultant debris.
 - Step 4 Turf over the area as shown hatched in black on Plan A attached to the notice. Erect a 500 mm red brick wall along the line marked "XXX".
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by the insertion of the word "high" after "500 mm" in Step 4 of the enforcement notice. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the appeal documents, a decision can be reached on the papers.
3. Paragraph B.9 onwards of the Procedural Guide - Enforcement Notice Appeals - England November 2020 states 'Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the appeal without a site visit'. As there are no other grounds of appeal other than a legal ground, the appeal has therefore been decided without a site visit.
4. After the enforcement notice was issued the appellant removed the bin store structure and has therefore complied with Step 2 of the notice. The appeal on ground (c) is therefore proceeding only in respect of the hard standing.

The ground (c) appeal

5. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control. In this case the appellant submits that development has taken place but no explicit planning permission is required for the hard standing as approval is given by the Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 1, Class F, (the GPDO).
6. The meaning of development is set out in section 55 of the Town and Country Planning Act 1990 (the Act) and includes in the definition of the word "development" the carrying out of "building, engineering, mining or other operations in, on, over, or under land". Section 55(1A) states that for the purposes of the Act building operation includes "(d) other operations normally undertaken by a person carrying on business as a builder". Section 57(i) states that, subject to the provisions of the section, planning permission is required for the carrying out of any development of land.
7. The appellant accepts that operational development has taken place and relies on Class F of the GPDO. This states that development consisting of the provision within the curtilage of a dwelling of a hard surface for any purpose incidental to the enjoyment of the dwelling is permitted development (PD). This is subject to a condition.
8. The hard surface the subject of the notice is situated between the principle elevation of the dwelling and the highway. From the appellant's submissions regarding the surface drain, it would appear that he accepts the area of the hard surface is greater than 5 sqm.
9. However, what is apparent from the Council's photographs is that the hard surface goes beyond the front garden. It extends onto what was a grass verge outside the curtilage of the property and which was separated from the curtilage of the dwelling by a low brick wall.
10. The wording of Class F is quite specific in that the development of a hard surface is only PD where its provision is within the curtilage of the property. There is no authoritative definition of the term "curtilage" but the Ministry for Housing, Communities and Local Government document Permitted development rights for householders - Technical Guidance (TG) understands curtilage to be "land which forms part and parcel with the house, usually it is the area of land within which the house sits or to which it is attached, such as the garden".
11. The development of the hard standing goes beyond the front garden and involved the removal of the low brick wall and the laying of a hard surface over what was the grass verge. Having regard to the advice in the TG, I find that the grass verge was outside the curtilage of the dwelling. As such, the development does not benefit from PD.
12. Notwithstanding this, the appellant has failed to demonstrate how the hard surface complies with the condition attached to Class F. This stipulates where the hard surface would be on land between a wall forming the principle elevation of the dwelling and the highway, and the area of ground covered by the hard surface would exceed 5 sqm, either the hard surface is made of porous materials or provision is made to direct run off water from the hard

surface to a permeable or porous area or surface within the curtilage of the dwelling.

13. The appellant states the hard surface benefits from a surface drain within the curtilage of the site but provides no details as to where it is and how it operates. The Council's photographs do not show a drain within the site only a storm drain cover on the road adjacent to the drop kerb.
14. For the above reasons I therefore conclude that the laying of the hard surface is not PD as set out in Class F of the GPDO. It does not lie within the curtilage of the property and it has not been demonstrated how the development complies with the condition set out in Class F. The operational development therefore constitutes a breach of planning control and the appeal on ground (c) fails.
15. Although there is no appeal on ground (f), it is necessary to vary the notice as Step 4 fails to include the word "high" after "500 mm", which is necessary to understand fully the meaning of Step 4. I consider varying the notice so as to include this word would not result in injustice to the appellant as the requirements of the notice would not be expanded, merely clarified.

Conclusion

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

D Fleming

INSPECTOR