
Appeal Decision

Site visit made on 20 October 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 16 November 2021

Appeal Ref: APP/T5150/C/20/3264959

15 Campden Crescent, Wembley HA0 3JH

- 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 Chandrawadan Patel against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, issued under ref E/20/0562, was issued on 4 November 2020.
- The breach of planning control as alleged in the notice is an alleged failure to comply with condition no. 3 of planning permission no. 10/1661 granted by the Council of the London Borough of Brent on 27 August 2010. The alleged failure to comply with the condition is said to arise "because the detailed works have not been carried out prior to the occupation of the premises and the front garden area is not in line with any approved scheme, as no planning application has been submitted".
- The requirements of the notice (as originally issued on 4 November 2020) are to either (1) cease the occupation of the development; or (2) remove the hardsurface marked hatched in black on the attached Plan A, dig/rip the land where that hardsurface formally (*sic*) stood and lay top soil on that area of land and lay turf over that area. Remove brick boundary wall and build a new castellated brick boundary wall between the points marked on the attached Plan A to the enforcement notice, ensuring that the design and materials of the boundary wall match that installed at no. 17. Plant a privet hedge behind the castellated brick boundary wall.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The notice is a nullity and no further action is taken.

Procedural Matters

Waiver or relaxation

1. On 11 January 2021 the Council wrote to the appellant purporting to exercise its power under section 173A of the 1990 Act to waive or relax the requirements of the enforcement notice. In doing so it replaced Plan A attached to the original notice with a plan referred to as '002/cc'.
2. Several versions of a plan numbered '002/cc' are included in the documents before me, all showing slightly different things, but the one attached to the Council's letter was shown as Version 2, with the frontage paved driveway to the left shown as 4402.17mm wide and a small part of a proposed area of permeable resin amounting to 440mm beyond that, although that part lies behind what appears to be shown as a wall.
3. Rather than seeking to remove the hardsurface marked hatched in black on Plan A and to replace it with turf and top soil, the purportedly varied notice

seeks to impose such requirements by reference to plan 002/cc. There are two significant problems with this approach.

4. First, the relevant power in section 173A is limited to waiving or relaxing the requirements of a notice (or withdrawing it). It does not appear to me to extend to what the Council seek here, which is to substitute a plan showing an entirely different scheme altogether. That scheme may be less onerous to the appellant, but that in itself does not mean that it constitutes a waiver or relaxation of the existing requirements. The new plan 002/cc shows elements that are not covered by relaxing the requirements of the original notice to remove all the hardstanding shown on Plan A and to replace it with topsoil and turf. In particular the plan shows a large area of permeable resin. This introduces a new element that I do not consider falls within the scope of the relevant power.
5. However, even if I were to presume that the power had been exercised properly, the second and rather more fundamental problem is that the requirements of the 'amended' notice make no sense. There is no area shown 'hatched in black' on Plan 002/cc. It is therefore entirely unclear what the recipient of the notice is supposed to do in response to it. Nor are there any 'points marked' on this plan to which a replacement castellated boundary wall is required by the notice to correspond (although it does have the advantage over Plan A in that a wall is actually shown on the plan drawing).
6. By purporting to vary the notice in this way, the result would be that a potentially valid notice is rendered a nullity. I shall therefore proceed to consider the appeal by reference to the notice as originally drafted and its inclusion of Plan A.

The allegation

7. Turning to the allegation in schedule 2 of the notice, the Council avers that condition no. 3 has been breached because the 'detailed works have not been carried out prior to the occupation of the premises'. This cannot be right. The permission granted was for the demolition of an existing garage and the erection of extensions and alterations, a new garage, and the installation of boundary gates. There is no mention of occupation of the premises either in the description of the permission or in condition 3 itself. The condition requires the submission of a scheme and details of hardsurfacing materials to be provided to the Council 'before any works commence on site'. The approved landscaping scheme was to be completed during the first available planting season 'following completion of the development'. Thus, under the terms of the permission, occupation of the site does not trigger a breach of planning control in any way. As the permission granted was for works to and in the grounds of an existing dwellinghouse, this is to be expected.
8. Plainly, as I observed at my site visit, works have commenced on site, thus potentially triggering a breach of the requirements to submit a landscaping scheme and details of materials. The Council does not allege any breach in relation to works having begun without the submission of those details or scheme. Nor does it expressly allege that the expiry of a planting season since 'completion of the development hereby approved' has occurred, which would potentially trigger a breach in relation to completing the approved landscaping scheme.

9. The description of the permission granted includes the installation of new timber front boundary gates. Whilst the other elements of the permitted scheme appeared to have been completed when I visited the site, the absence of timber boundary gates (and the absence of the expiry of a planting season since their installation) means that I am unable to conclude that the requirement to complete a landscaping scheme has in fact been triggered.
10. As a result of this, and because of my findings in relation to the requirements of the notice (in either version), I have not therefore sought to rescue the notice by seeking to amend the alleged breach to one reflecting the terms of the permission granted. In the terms of the allegation made by the Council, no breach of planning control has occurred in respect of the failure to carry out a landscaping scheme, because there is no requirement to submit a scheme or details or to carry out the detailed works 'prior to the occupation of the premises', as alleged.

Requirements of the original notice

11. The lack of any reference to occupying the development in the grant of permission or in condition 3 means that the first alternative remedy, to cease the occupation of the development, is plainly unreasonable. The second alternative, in the original notice, imposes three separate requirements.
12. The first requirement involves removing areas of hardstanding shown hatched in black on Plan A and replacing them with topsoil and turf. That much is clear in relation to Plan A (although not, as I have explained, in relation to Plan 002/cc which purports to replace it). The second requirement I find to be hopelessly uncertain. It requires the removal of a brick boundary wall and the building of a new castellated brick boundary wall 'between the points marked on the attached Plan A'. Looking at Plan A, there are no obvious 'points marked'. There are two black triangles on the plan, which may be meant to indicate the 'points marked'. Because the notice does not state the form in which the points are to be shown on the plan, it is impossible to say for certain.
13. However, these triangles are marked on either side of the hard surfaced driveway area to be retained. If they are intended to constitute the 'points marked', denoting the position of the wall to be constructed, then I find it difficult to believe that the Council really seek a castellated brick wall to be built in front of the driveway and not in front of the area to be turfed. If so then the effect would be to block off vehicular access to the domestic garage building for which permission has been granted, which strikes me as a singularly disproportionate response. However, there are no other 'points marked' on the plan that would assist me in coming to a different conclusion. The third requirement is to plant a privet hedge behind the castellated brick boundary wall, which is to continue the uncertainty introduced by the second requirement.

Conclusion and Formal Decision

14. For the reasons set out above, I find that the allegation made by the Council in schedule 2 of the notice does not reveal a breach of planning control when read against the terms of the relevant planning permission. Although the notice may be capable of correction in this regard, I find the requirements of schedule 4 of the notice, when read against either Plan A or Plan 002/cc, to be altogether uncertain for the reasons I have given.

15. The recipient of the notice cannot tell with reasonable certainty what must be done to remedy the alleged breach. I am conscious that it is in the public interest not to set the bar too low for findings of nullity but, on either version of the plan attached to it, I find the notice to be beyond saving.
16. I have had regard to the remarks of Lord Justice Upjohn in Miller-Mead v MHLG [1963] 2 WLR 225 and to the courts' decisions in subsequent litigation in this field. The notice is a nullity.
17. It follows that the appeal on ground (f) does not fall to be considered. The Council should, as a consequence of my finding, consider reviewing the register kept under section 188 of the 1990 Act.

Laura Renaudon

INSPECTOR