



Appeal Decisions

Site visit made on 15 March 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 April 2022

Appeal A Ref: APP/T5150/C/21/3274229

Appeal B Ref: APP/T5150/C/21/3274230

Appeal C Ref: APP/T5150/C/21/3274231

Appeal D Ref: APP/T5150/C/21/3274232

8 and 10 Audrey Gardens, Wembley HA0 3TG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Dr Ziaudeen Abdul-Cader (Appeal A), Mrs Fowzun Nissa Abdul-Cader (Appeal B), Mr Rameez Ahmed Syed (Appeal C) and Mrs Arshia Basha (Appeal D) against an enforcement notice issued by London Borough of Brent.
 - The notice was issued on 31 March 2021.
 - The breach of planning control as alleged in the notice is the formation of a parking surface area to the front of the premises.
 - The requirements of the notice are: 1. Remove the parking surface area from the premises hatched in green on plan A attached to the notice. 2 Dig/rip the land to reveal soil in the area hatched in green. Grass over the area with turf. 3. Plant privet hedges behind the entirety of the front brick walls that are adjacent to the highway. Also plant a privet hedge in between the two red lines on the boundary between 8 and 10 Audrey Gardens as shown in the attached plan.
 - The period for compliance with the requirements is four months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decisions

1. Appeals A, B, C and D-it is directed that the enforcement notice be corrected by deleting the words "shown outlined bold in black on the attached plan ("the Land")" in Schedule 1 and varied by deleting step 3 of Schedule 4 and substituting it with the following step 3: "Plant a privet hedge in between the two red lines on the boundary between 8 and 10 Audrey Gardens as shown in Plan A". Subject to the above correction and variation the appeals are allowed and the enforcement notice is quashed.

Preliminary Matters

2. The appeals concern a pair of semi-detached residential properties. The plan referred to in Schedule 1 of the enforcement notice is incorrect, as 10 Audrey Gardens (No 10) is not within the area shown outlined in black. There is no statutory requirement for a plan identifying the relevant land to be attached to the notice. Regulation 4(c) of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 requires an enforcement notice to specify the precise boundaries of the land to which the notice relates, by reference to a plan or otherwise. The notice specifies the correct address of

the land affected. Also, a second plan is attached to the notice-plan A referred to in Schedule 4-which shows the notice requirements as applying to No 10 and 8 Audrey Gardens (No 8). This means that there is no doubt about exactly what land the notice relates to. Accordingly, I shall correct the notice by deleting reference to the attached plan in Schedule 1.

3. Step 3 of the notice requires the planting of privet hedges behind the frontage walls of both properties. However, the available evidence shows that there were no hedges along the frontages of either property prior to the carrying out of the works attacked by the notice. In the case of No 8, two evergreen trees and a large shrub were behind the frontage wall, whilst there was no such planting at No 10. An enforcement notice can only require restoration of land to its condition prior to the breach taking place; it cannot require a landowner to undertake works which would result in an improvement to its pre-existing condition. Therefore, although ground (f) appeals were not pursued, after having sought the views of the main parties I shall also vary the notice to delete the requirement to plant hedges behind the frontage walls.
4. In making the correction and variation set out above I am satisfied that no injustice would be caused to the appellants or the Council.

Appeals A, B, C and D-Ground (c) appeals

5. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. It is for the appellants to show why their appeals should succeed, the relevant test of the evidence being on the balance of probability. Only matters of fact and law can be considered.
6. The definition of development in s55(1) of the Act¹ includes the carrying out of building, engineering, mining or other operations in on, over or under land. Building operations include rebuilding and other operations normally undertaken by a person carrying on a business as a builder.
7. The notice attacks works consisting of hardsurfaces situated between the front elevations of the dwellings and frontage walls adjoining the highway. At No 8, the hardsurface consists of a central area of block paving with areas of loose gravel on either side. At No 10, the hardsurface consists of block paving apart from an area alongside the frontage wall surfaced with loose gravel. The works involved in laying the hardsurfaces are of significant scale and magnitude, covering the entirety of both front garden areas and being carried out by a contractor that specialises in hardsurfacing. Therefore, as a matter of fact and degree, undertaking the works has amounted to development. Planning permission is required for the carrying out of any development of land, having regard to s57(1) of the Act. A breach of planning control is defined at s171A(1)(a) of the Act as carrying out development without the required planning permission.
8. The GPDO² at Article 3, Schedule 2, Part 1 grants planning permission for undertaking certain development within the curtilage of a dwelling. However, the properties are located within the Sudbury Court Conservation Area (CA). The Council's Article 4(1) Direction has the effect that within the CA, express planning permission is required for specified development otherwise permitted

¹ The Town and Country Planning Act 1990 (as amended).

² The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

by the GPDO. In particular, express planning permission is required in the CA for the construction of a hardstanding for vehicles, the provision of a hardsurface within the curtilage required for any purpose incidental to the enjoyment of a dwelling otherwise being permitted by the GPDO at Article 3, Schedule 2, Part 1, Class F.

9. Be that as it may, Class F also grants planning permission for development consisting of the *replacement* [my emphasis] in whole or part of a hardsurface, at paragraph F.(b). There is no reference in the Article 4(1) Direction to restricting the permitted development right to replace a hardsurface in Class F, paragraph F.(b). The Article 4(1) Direction is entirely silent in this respect. The planning consequences of replacing a hardsurface are highly likely to be materially different from constructing a hardsurface where none existed previously. Therefore, if the intention of the Article 4(1) Direction had been to also remove the permitted development right to replace a hardsurface, it would surely state as such. In my view, the Direction cannot reasonably be read so as to imply the removal of the planning permission granted for the replacement of a hardsurface by Class F in paragraph F.(b), as that goes beyond what is stated in the text.
10. The available evidence clearly shows that the front garden areas of No 8 and No 10 had for the most part been covered by hardsurfaces, albeit in varying states of repair, prior to the works being undertaken. The appellants' evidence regarding the pre-existing hardsurfaces, which includes photographs showing the properties prior to the works being undertaken, is supported by the Council's own evidence. An interested local resident's detailed recollection of the front of Nos 8 and 10 prior to the carrying out of the works provides further support to the appellants' evidence. The works do not cover a materially greater portion of the front garden areas of No 8 and No 10 compared with the pre-existing hardsurfaces. Therefore, as a matter of fact and degree it is not unreasonable to regard what has been done at the properties as works involving the replacement of hardsurfaces, falling within paragraph F.(b).
11. Permission is granted by Class F subject to the condition at paragraph F.2 that where a hardsurface is situated on land between a wall forming the principal elevations of the dwelling and a highway and the area of the hardsurface replaced exceeds 5 m², as in this instance, the hardsurface must either have porous materials or provision must be made to direct run-off water to a permeable or porous area or surface within the curtilage.
12. All of the factors before me point towards the condition in paragraph F.2 as having been met. Whilst it might be unclear whether the block paving is permeable, substantial parts of the works incorporate permeable or porous materials, being surfaced with loose gravel. Gravel surfaced areas are commonly understood as having porous or permeable qualities. The positioning of the gravel surfaced areas alongside the edges of the paved surfaces indicates that the former have a drainage function. During my visit and in photographs of the properties supplied I observed nothing to indicate that water had pooled on any part of the hardsurfaces or of gravel overspill, both being potential signs of non-porosity. Weed growth in the gravel surfaced areas also indicates that they are porous. The appellants supplied a copy of the contractor's invoice, which includes the installation of drainage amongst the itemised works undertaken at the properties. An interested local resident

confirmed that there had been no issues of flooding at the properties in the almost three-year period since the works were undertaken, reinforcing the likelihood that provision has been made for water run-off.

13. Accordingly, I find that on the balance of probability the works are granted planning permission by the GPDO at Article 3, Schedule 2, Part 1, Class F.
14. As the appellants have therefore shown that the matters alleged in the notice do not constitute a breach of planning control, the ground (c) appeals succeed.

Conclusion

15. On the balance of probability, the appeals on ground (c) should succeed in respect of those matters which are stated as constituting the breach of planning control. The enforcement notice will be corrected and varied prior to being quashed.

Stephen Hawkins

INSPECTOR