
Appeal Decisions

Site visit made on 11 January 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2023

Appeal A ref: APP/B5480/C/22/3294921

Appeal B ref: APP/B5480/C/22/3294923

42 Fontayne Avenue, Romford RM1 4NR

- Appeals A and B are 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 Rolandas Razgauskis (Appeal A) and Mrs Erika Razgauskiene (Appeal B) against an enforcement notice issued by the London Borough of Havering.
 - The notice was issued on 15 February 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the formation of a hard surface in the front garden of the property.
 - The requirements of the notice are:
 - (i) remove all hard surfacing from the front of the property in the area shown hatched black on the attached plan; and
 - (ii) remove from the land all materials, rubble, machinery, apparatus and installations used in connection with or resulting from compliance with step (i) above.
 - The period for compliance with the requirements is within three months after the date this notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeals A and B - Formal Decisions

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

The appeals on ground (c)

2. To succeed on this ground, the onus is on the appellants to show, on the balance of probability, that the hardstanding at the front of the appeal property did not constitute a breach of planning control.
3. The appellants claim that the hard surface is permitted development (PD), that planning permission is not required and that no breach of planning control has occurred. For this to be the case, the hardstanding would need to accord with Class F, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the "GPDO").
4. Class F of the GPDO relates to hard surfaces within the hard surfaces incidental to the enjoyment of a dwellinghouse subject to limitations and conditions. It grants planning permission for development consisting of: the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or the replacement in whole or in part of such a surface. Paragraph F.1 is irrelevant but F.2 stipulates that where the hard surface would be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway, and the area of ground covered by the hard surface, or the area of hard surface replaced, would exceed 5 square metres, 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 dwellinghouse. The issue is whether the alleged development satisfies Paragraph F.2.

5. The evidence before me clearly shows that the hard surface at the front of the appeal property was not, at the time when the development was started and the Council served the enforcement notice, made of a porous surface, and no provision was made to direct surface run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.
6. Since the notice was served, the appellants have put in place provision to direct surface run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse. Whilst these are now in place, the GPDO does not grant retrospective planning permission. For the development undertaken to have been permitted by the GPDO in force at the time when development was begun, the hard surface should have been made of porous material or adequate provision of surface water run-off should have been installed before the notice was served. This was not the case based on the appellant's evidence. I conclude that the appeals on ground (c) fail because express planning permission for the matter alleged is required.

The appeals on ground (f)

7. An appeal under ground (f) is that the appellant considers that the notice's remedial steps go beyond what is reasonably necessary to remedy the identified harm. In this respect it is important to assess whether the purpose of the notice is to remedy the breach or, alternatively, to remedy any injury to amenity. In this case, it seems that the notice serves to address the former.
8. The appellants say that the hard surface is PD with the now installed drainage channel across the front of the hard surface that directs run-off water to a soakaway beneath the hard surface. However, the planning merits of the drainage works carried out can only be considered in relation to ground (a). There is no ground (a) appeal. Also, varying the requirements to secure the drainage details would be akin to imposing a planning condition.
9. The appellants, as recipients of the notice, are entitled to know what they are required to do, and the requirements of the notice cannot be so fundamentally vague or uncertain that the appellants do not know how to comply. As such, the notice cannot require the appellants to comply or seek to comply with a vague requirement. Therefore, despite the drainage works carried out, I am not able to vary the requirements of the notice as it would introduce uncertainty. Moreover, retaining the hard surface with the drainage provisions would not remedy the breach of planning control set out in the notice. As a result, any lesser steps that stop short of complete removal of the hard surface would not remedy the breach of planning control. In such circumstances, I am unable to vary the notice as it would attack the substance of the notice. Hence, ground (f) fails because the requirements are necessary to remedy the breach of planning controls.

Conclusions

10. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Andrew McGlone

INSPECTOR