



Appeal Decision

Site visit made on 24 January 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

Appeal Ref: APP/T5150/C/22/3297513

90 Wembley Park Drive, Wembley, HA9 8HW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr Imran Raja against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, numbered E/22/0057, was issued on 16 March 2022.
- The breach of planning control as alleged in the notice is: without planning permission, the formation of an access onto a highway by the demolition of the front boundary walls and the removal of privet hedge to create a front driveway/parking area.
- The requirements of the notice are to: (1) Remove the access on to the highway by: Erecting a 1m high brick wall adjacent to the highway parallel with the highway to the front of the premises; Plant privet hedge behind the brick wall alongside each boundary to the front of the premises; (2) Remove the hardstanding to the front of the premises and dig/rip the land to ensure the final 500mm of the land to the front of the premises consist of top soil so that the front garden is restored back to its original condition before the unauthorised works took place as shown in photograph A; and (3) Remove all items, materials and debris arising from compliance with (1) and (2).
- The period for compliance with the requirements is: 3 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (f), (g) of the Act.

Summary of Decision: The appeal succeeds in part on ground (f) and the notice is upheld as varied in the terms set out below in the Formal Decision.

Preliminary Matter

1. Reference has been made to the tidiness of the land, pedestrian safety, and other instances where front boundary walls and hedges have been removed but those matters may only be considered in an appeal made on ground (a)¹. While maintaining off-road parking for an ambulance may be desirable, its planning merits may also only be considered in an appeal on that ground.

The Notice

2. Although an appeal on ground (b)² has not been made, evidence confirms that a driveway and vehicular and pedestrian access onto Wembley Park Drive existed before any part of the alleged breach of planning control occurred. Consequently, the development that occurred, to which the notice responds, was the widening of the access, including the enlargement of the front driveway/parking area. Having sought the views of the parties, I consider the notice can be corrected to reflect this fact without injustice and I shall decide the appeal on that basis.

¹ That in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

² That (the matters stated in the notice which may give rise to the breach of planning control) have not occurred.

3. An appeal has not been made on ground (c)³ but the appellant contends he had been told that the removal of the front boundary walls and the hedge did not require planning permission. There is no evidence that the removal of the hedge constituted development and The Town and Country Planning (Demolition - Description of Buildings) Direction 2021 confirms, at paragraph 3, that the demolition of the whole or part of any wall that is not within a conservation area does not involve development of land.
4. Nevertheless, the wording of the allegation indicates that the demolition and removal of the walls and hedge, and the enlargement of the driveway/parking area, are constituent parts of the operations to widen the access. Put another way, the access could not have been widened without the demolition of the walls and the removal of the hedge.
5. The appellant states that he demolished the walls in 2017 so that a lorry could deliver soil and materials for the construction of a basement. However, it is not stated whether that was to allow the lorry to gain access to the land or to facilitate storage of delivered items. Furthermore, it is not explained why the removal of all the walls and the entire hedge would have been necessary for either purpose. The lack of precision in this evidence limits the weight it can be afforded in my decision. There is further ambiguity because the appellant states that the garage was removed in 2017 but a garage is visible in subsequent photographs and Street View images and was still in place at the time of my visit.
6. Because of this ambiguity and lack of precision it has not been established that the operations comprising the breach of planning control were undertaken for any purpose other than to facilitate widening the access to the highway. Accordingly, I find that the demolition of the walls and the removal of the hedge were integral to the unauthorised development attacked by the notice.

The appeal on ground (d)

7. An appeal on this ground may succeed to the extent that an appellant can demonstrate, on the balance of probability, that the development comprising the breach of planning control is immune from enforcement action. In this case, it would be necessary to demonstrate that the development was substantially completed on or before 16 March 2018 (the Relevant Date), which is 4 years before the notice was issued.
8. The appellant contends that clearance, including the demolition of the walls, occurred in 2017 but has not produced documentary evidence to corroborate this claim. A Street View image shows the walls and hedge removed in March 2018, but the precise date is not specified, so it cannot demonstrate that the demolition and removal had taken place on or before the Relevant Date.
9. The appellant has not produced evidence that the enlarged front driveway/parking area was substantially completed on or before the Relevant Date. Evidence provided by the Council⁴ indicates it was only partly surfaced, and therefore was not substantially complete, until after 23 February 2020, approximately 2 years after the Relevant Date.

³ That (the matters stated in the notice which give rise to the alleged breach of planning control) if they occurred, do not constitute a breach of planning control

⁴ Images 4, 5 and 6 in Appendix 8 to its Statement of Case

10. I have found that the demolition of the walls and the removal of the hedge were integral to the unauthorised development attacked by the notice. The appellant has not demonstrated, on the balance of probability, that this development was substantially completed on or before the Relevant date. The available evidence indicates that substantial completion of the widened access may have occurred later with the final surfacing of the driveway/parking area.

11. For these reasons the appeal on ground (d) should fail.

The appeal on ground (f)

12. An appeal may succeed on this ground if the steps required to comply with the notice are excessive. The notice states, in Schedule 4, that its objective is to remedy the breach of planning control described in Schedule 2. It must therefore be demonstrated that lesser steps could remedy that breach. The appellant is correct that it would be unreasonable for the garage to be removed but the notice does not require that.

13. The suggested alternative steps of planting, with or without a wall, along one or both side boundaries would soften the appearance of the widened access. However, they would not remedy the breach because the access would remain.

14. As stated by the appellant and confirmed in images provided by the Council, the front walls were well under 1m in height. The greater height of 1m required in Step 1 of the notice is therefore excessive and a lower wall would equally remedy the breach by closing the widened parts of the access. The notice should therefore be varied accordingly.

15. While the appellant has not raised the matter, there is a contradiction within the requirements of the notice. Step 1 requires a wall to be erected to the front of the premises and adjacent to the highway while Step 2 requires the final 500mm of the land to the front of the premises to consist of topsoil. The final 500mm of the land is adjacent to the highway and must therefore include the wall that Step 1 requires to be built. This contradiction could be resolved without injustice if Step 2 were qualified to exclude any part where a wall is erected in compliance with Step 1.

16. The appeal on ground (f) should succeed to this extent, with the notice varied accordingly.

The appeal on ground (g)

17. For an appeal to succeed on this ground, it must be demonstrated that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed.

18. The Covid-19 pandemic created financial issues that still affected the appellant when he made his appeal. He contends that at least a year should be allowed to comply with the notice as a result. However, the nature and effect of the financial issues are not clearly stated, so they have not been shown to prevent compliance within the 3-month period stated in the notice.

19. The appellant's final comments introduce a new point about the proposed erection of a back garden fence in co-operation with a neighbour. Even if this late evidence were accepted, it has not been shown that any issues affecting

that project would hinder compliance with the notice's requirements relating to the front of the property.

20. Consequently, I shall not vary the notice in terms of the period for compliance and the appeal on ground (g) should fail.

Conclusion

21. For the reasons given above, I conclude that the appeals on grounds (d) and (g) should not succeed and the appeal on ground (f) should succeed. I shall uphold the enforcement notice with corrections and variations.

Formal Decision

22. It is directed that the notice is corrected in Schedule 2 (the alleged breach of planning control) by:

- The deletion of the words "an access onto a highway" and the substitution of the words "a widened access onto a highway"; and
- The deletion of the words "a front driveway/parking area" and the substitution of the words "an enlarged front driveway/parking area".

23. It is further directed that the notice is varied in Schedule 4 (what you are required to do) by:

- The deletion of the words "Remove the access" and the substitution of the words "Remove the widened part of the access" in Step 1.
- The deletion of the words "a 1m high brick wall" and the substitution of the words "a brick wall not exceeding 1m in height" in Step 1.
- The deletion of the words "parallel with the highway to the front of the premises" and the substitution of the words "parallel with the front of the premises except for a section behind, and of the same width as, the dropped kerb and a further section not exceeding 1m in width for any separate pedestrian access" in Step 1.
- The removal of the words "Remove the hardstanding to the front of the premises" and the substitution of the words "Remove the hardstanding to the front of the premises except for a section perpendicular to the highway aligned with, and of the same width as, the dropped kerb and any further section required for a separate pedestrian access not exceeding 1m in width" in Step 2.
- The deletion of the words "the final 500mm of the land" and the substitution of the words "the final 500mm of the land, less any part on which a wall is erected in compliance with Step 1 of this notice," in Step 2.

24. Subject to the corrections and variations, the appeal is dismissed and the notice is upheld.

Mark Harbottle

INSPECTOR