



Appeal Decision

Site visit made on 9 November 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2023

Appeal Refs: APP/W5780/C/21/3274610 and 3274611

47 Levett Gardens, Ilford, IG3 9BT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
 - The appeals are made by Mr Dalbir Singh (3274610) and Mrs Sarbjit Kaur (3274611) against an enforcement notice issued by the Council of the London Borough of Redbridge.
 - The enforcement notice was issued on 8 April 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the hard surfacing of the front garden.
 - The requirements of the notice are:
 - (i) Remove concrete hardstanding and reinstate the front garden to the previous condition (as outline in blue).
 - (ii) Remove from the land all building materials and rubble arising from compliance with step (i) above.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(d) of the Act.
-

Decision

1. It is directed that the notice be corrected in Section 5(i) by deleting all of the words therein and substituting instead the following words: "Restore the front garden to its former condition by removing the concrete hardstanding, except as shown shaded in blue on the plan attached to the notice".
2. Subject to the correction the appeals are dismissed.

The Enforcement Notice

3. While the appellants will no doubt be aware of the former condition of the front garden, I nonetheless re-worded requirement (i) in Section 5 of the notice to make it precisely clear that the area shaded in blue on the notice plan does not need to be removed. In accordance with s176(1) of the Act I am satisfied that no injustice arises to any party by my correcting the notice in this way.

Appeal site and background

4. No.47 is a detached residential property located in the Bungalow Estate (Formerly Mayfield) Conservation Area. Along with others in the area it is subject to an Article 4 Direction¹ removing certain permitted development rights, including the provision or replacement, in whole or in part, of a hard surface within the curtilage of a dwellinghouse.

¹ A Direction made under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015, which removes "permitted development" rights.

Ground (d)

5. The appeal on ground (d) is that at the date the notice was issued the hard-surfaced area to the front garden was immune from enforcement action due to the passage of time. The appellants must show that the hard-surfaced area was substantially completed more than 4 years before the enforcement notice was issued (hence, before 8 April 2017).
6. In this legal ground of appeal the Courts have established that the onus of proof falls to an appellant², with the test of the evidence being on the balance of probabilities³. Also, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted⁴.
7. The appellants state that the concrete hard surface was already in place by 2013. However, no convincing evidence has been submitted to support that contention. It is also contradicted by the Council's photographic evidence (Appendix 7) dated July 2014 which shows the front garden at that time still lawned.
8. The Council say they were first informed of the concrete being poured over the front garden on 11 October 2017 and (hence less than 4 years before the notice was issued) and inspected the site on 24 October 2017. They observed what they describe as freshly poured cement.
9. To conclude, I find the appellant's case is not supported by any convincing evidence. It is not sufficiently precise and unambiguous. It is also significantly contradicted by the Council's evidence. On the balance of probability, I conclude that the development was not immune from enforcement action on the date the enforcement notice was issued.
10. For these reasons the appeal on ground (d) fails and the appeal is dismissed.

Thomas Shields

INSPECTOR

² *Nelsovil v SSE* [1962] 13 P&CR 151

³ *Thrasyvoulou v SSE & Hackney LBC (No1)* [1984] JPL 732

⁴ *Gabbittas v SSE & Newham LBC* [1985] JPL 630, *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin)