



Appeal Decision

Site visit made on 24 April 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09th May 2024

Appeal Ref: APP/T5150/C/23/3327171

39 Dartmouth Road, London NW2 4ET

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Simon Lebor against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 13 June 2023.
- The breach of planning control as alleged in the notice is Without planning permission, carrying out alterations to the front garden of the premises, including the demolition of a boundary wall widening access to the highway and the formation of a hard surface.
- The requirements of the notice are: STEP 1 Remove the unauthorised hard surface to the front of the premises. STEP 2 Rebuild the low brick boundary wall and restore the land to its previous condition, as shown in "Photograph A" and "Plan A" attached to this notice. STEP 3 Remove all items, materials and debris, resulting from the compliance with the above steps, from the premises.
- The period for compliance with the requirements is 4 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f), and (g) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The notice alleges the demolition of a boundary wall which has the effect of widening access to the highway. This appears to have caused some confusion, as it is claimed the driveway has not been widened. There is no need for the alleged breach of planning control to refer to the effect that the demolition of the wall has had on the width of access. I shall vary the alleged breach of planning control by deleting the unnecessary text in the interests of clarity.
2. There is no appeal under ground (a), and as such there is no deemed application for planning permission under consideration. The appellant has referred to various planning issues, including personal circumstances and disabilities affecting access to the site, difficulty charging an electric car without hindering access to Flats 2 and 3, and the character and appearance of the area. While those matters may be relevant when considering whether planning permission should be granted for the development, they are not relevant to the legal grounds of appeal, which are determined on the facts presented.

Ground (b)

3. To succeed under this ground of appeal the appellant would need to demonstrate, on the balance of probabilities, that the alleged breach of planning control has not occurred. The onus is on the appellant to support their case with sufficiently detailed and unambiguous evidence.

4. Photographic evidence¹ shows that a front boundary wall has been demolished and that areas at the front of the property which were not previously hard-surfaced have been finished in gravel. Reference has been made to the state of the property when the appellant moved in, in February 2023, but the Council's evidence indicates that at least some of the alleged unauthorised development was carried out prior to that date. It is of no relevance who carried out the works, or whether they were carried out prior to the appellant having an interest in the site.
5. Specific details of how gravel was added to the front of the property and how that may not have formed a hard surface have not been provided. The purpose of the gravel appears to be to create a low-maintenance parking area. On the evidence provided I find it more likely than not that the laying of the gravel areas comprised the formation of a hard surface.
6. The appeal under ground (b) must therefore fail.

Ground (c)

7. To succeed under this ground of appeal the appellant would need to demonstrate, on the balance of probabilities, that the alleged breach of planning control does not constitute a breach of planning control.
8. Section 57 of the Act states that planning permission is required for the carrying out of development of land. The meaning of 'development' is provided at section 55 of the Act, which includes the carrying out of building or other operations in, on, over or under land. Subsection (1A) clarifies that the demolition of buildings and other operations normally undertaken by a person carrying on business as a builder constitute 'building operations'. Section 336 of the Act defines 'building' as including any structure or erection, and any part of a building.
9. For the purposes of the Act, the boundary wall which has been demolished was a building, even if it was in a crumbling and unsafe state. The appeal site is located within the Mapesbury Conservation Area, and the demolition of the wall comprised development requiring planning permission.
10. The evidence shows that various alterations have been made to the land at the front of the appeal site since at least January 2018. Those works have included the removal of pavements and the laying of gravel and/or shingle. These are works which would reasonably be expected to be carried out by a person carrying on business as a builder. The extent of works necessary to create what has been described as a hard surface would have been significant. It is likely that they included the digging out and levelling of former hard surfacing and planting before gravel was laid, even if a sub-base was not put in place. In the absence of evidence to suggest otherwise, the extent of such works in this case comprised building operations requiring planning permission.
11. I have not been referred to any planning permission which may exist for the demolition of the boundary wall or the formation of the hard surface. I am aware that a Direction has been made under the provisions of Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), which has the effect of removing various 'permitted development rights' in this location. I am not therefore aware of any

¹ The Council's Appendix 2

planning permission which may exist for the development under the provisions of the GPDO.

12. It has not been demonstrated, on the balance of probabilities, that the alterations made to the front garden, including the demolition of the boundary wall and the formation of a hard surface are not in breach of planning control.
13. The appeal under ground (c) must therefore fail.

Ground (d)

14. To succeed under this ground of appeal the appellant would need to demonstrate, on the balance of probabilities, that no enforcement action could be taken at the date the notice was issued in respect of the breach of planning control. As with the other grounds of appeal above, the onus is on the appellant to provide sufficiently clear evidence to support their case.
15. Section 171B(1) of the Act states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.
16. The evidence indicates that the development has been carried out between January 2018 and April 2023. There is no dispute that a boundary wall was demolished, and that gravel was added to part of the frontage of the appeal site after the appellant moved into the property in February 2023. The appellant has not provided evidence to suggest that any parts of the development may have been substantially complete at least 4 years before the notice was issued. The Council's evidence shows it is more likely than not that the development was substantially completed after 13 June 2019, less than 4 years before the notice was issued.
17. The appeal under ground (d) must therefore fail.

Ground (f)

18. To succeed under this ground of appeal the appellant would need to demonstrate that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
19. The notice requires the hard surface to be removed, the boundary wall to be rebuilt and the land to be restored to its previous condition. The purpose of the notice is to remedy the breach of planning control, rather than any injury to amenity. It is therefore of no relevance whether other properties in the local area have similarly arranged front garden areas.
20. A photograph and a plan have been attached to the notice, showing the former condition of the front of the appeal site. It is claimed that they are not a true representation of the property when the appellant moved in, but that was some time after alterations to the front garden commenced. To remedy the breach of planning control in this case it is necessary to restore the land to its condition before the breach took place, in accordance with section 173 of the Act.

21. The steps required to be taken by the notice are not excessive and are the minimum necessary to achieve the purpose of the notice and restore the land to its former condition.

22. The appeal under ground (f) therefore fails.

Ground (g)

23. To succeed under this ground of appeal the appellant would need to demonstrate that 4 months falls short of what should reasonably be allowed for the notice to be complied with.

24. It has not been explained why 4 months would be insufficient time for the appellant to comply with the notice, and no alternative period has been suggested. I have been referred to personal circumstances, but these do not suggest that a longer period may be needed to comply with the notice. I consider 4 months from the date of this decision is a reasonable period for the notice to be complied with.

25. The appeal under ground (g) therefore fails.

Conclusion

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Formal Decision

27. It is directed that the enforcement notice is varied by the deletion of the text 'widening access to the highway' at Schedule 2 of the enforcement notice. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

L Douglas

INSPECTOR