



Appeal Decision

Site visit made on 30 September 2024

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 October 2024

Appeal Ref: APP/L5810/C/22/3312406

6 Denehurst Gardens, Twickenham TW2 7PY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Yossef La Cherie against an enforcement notice issued by the Council of the London Borough of Richmond Upon Thames.
- The notice was issued on 3 November 2022.
- The breach of planning control as alleged in the notice is: Without planning permission and within the last 4 years the demolition of the front boundary wall and paving of the front garden on the Land.
- The requirements of the notice are to:
 - (i) Reinstate the low front boundary wall to match in facsimile that which existed previously;
 - (ii) Remove the paving to the front garden and reinstate the grassed area previously in situ;
 - (iii) Ensure all waste associated with carrying out steps (i) and (ii) above are removed from the Land.
- The period for compliance with the requirements is: Within 2 months of the notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed, planning permission is refused and the enforcement notice is upheld.

The Notice

1. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act") include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.
2. The breach of planning control alleged in the enforcement notice ("the Notice") includes that the development happened within the last 4 years. This may be relevant to the reasons for issuing the Notice and some grounds of appeal, but it does not describe the alleged breach of planning control. It is, therefore, prudent to delete these words in the interests of clarity. As they are inconsequential to what is alleged to have happened and the grounds of appeal in this case, then no injustice will arise for either party.

3. The final requirement is a slightly vague one to 'ensure' that all waste has been removed from the site. The use of more directive language to simply remove the materials and debris would result in greater clarity. As this change would not result in any material difference to the operation of the Notice or its requirements, no injustice would arise to either party from such a correction.

Ground (c)

4. Ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. On this ground the onus of proof is on the appellant and the required standard is on the balance of probabilities.
5. Planning permission is granted by the Town and Country Planning (General Permitted Development) Order 2015 ("the GPDO") for various forms of development ("Permitted Development Rights") including the paving of residential gardens and alterations to boundary walls. Article 4 of the GPDO provides that directions removing Permitted Development Rights may be made.
6. The appellant suggests that an Article 4 Direction in this case does not remove Permitted Development Rights for hard surfaces. However, even if that were the case, to be permitted by the GPDO it is a condition that where a hard surface is 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 would exceed 5 square metres, either it must be 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.
7. The appellant has provided no evidence about the construction of the hard surface or drainage arrangements. Mindful that the burden of proof rests with the appellant, it has not been shown that the conditions of the GPDO were met. Irrespective of the Article 4 direction, therefore, I find that, on the balance of probabilities, the appeal on ground (c) must fail.

Ground (a)

8. Ground (a) is 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. The main issue is the effect on the character and appearance of the Rosecroft Gardens Conservation Area ("CA").
9. The site is part of an area known as the Dene Estate, all of which is designated as the CA. Despite some piecemeal alteration, the estate is a strikingly uniform development of suburban houses, developed around 1930. While some areas are a little unkempt, there is strong remaining evidence of the original unity in the architecture, positioning of the dwellings and treatment of the front boundaries with low walls, all of which contribute to the character and appearance of the CA and its significance as a cohesively planned single estate.
10. A large number of the front gardens across the estate have been covered in a variety of hard surfaces. While some dwellings have planting within the front gardens, it appears to me that there is such wide variety across the CA that the particular treatment of each individual front garden no longer appears to be a defining characteristic.

11. There are many locations within the CA where the front boundary walls have been removed. This includes most of the houses on the site-side of Denehurst Gardens. However, the front boundary walls are a clear part of the original design concept and do continue to contribute to the significance of the area and its appearance. Despite the widespread removal, the majority remain, including most of the opposite side of Denehurst Gardens, and further removal only reduces the remaining cohesion, failing to preserve the appearance and causing less than substantial harm to the significance of the CA.
12. There are a number of representations setting out the benefits that have arisen in respect of reducing parking pressure within the estate, particularly given the site's location on a corner. The ability to park on site would facilitate the parking of electric vehicles. However, I noted a number of locations around the estate where vehicles had been parked within the front garden spaces while the front boundary walls had been retained. It has not been shown that such would not be achievable in this location so I attach limited weight to the suggested benefits.
13. With regard to the above, and whether or not the general aesthetics of the appeal site are believed by the appellant and their neighbours to have been improved, I find that the public benefits of the development do not outweigh the less than substantial harm to the significance of the conservation area.
14. There is, therefore, conflict with Policies LP1 and LP3 of the London Borough of Richmond upon Thames Local Plan 2018 that require development to be compatible with the area in which it is situated, preserve or enhance the character or appearance of conservation areas, with great weight being given to the conservation of heritage assets. Accordingly, I find that planning permission should not be granted for the matters alleged in the Notice and the ground (a) appeal should fail.

Formal Decision

15. It is directed that the enforcement notice is corrected by:

In Section 3 'The Breach of Planning Control Alleged':

- Delete the words "and within the last 4 years".

In Section 5 'What You Are Required To Do':

- In paragraph (iii) Delete the text in its entirety and replace with the words "Remove all waste associated with carrying out steps (i) and (ii) above from the Land.

16. Subject to the corrections, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

M Bale

INSPECTOR