



Appeal Decisions

Site visit made on 12 November 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2024

Appeal A Ref: APP/A5270/C/23/3317194

Appeal B Ref: APP/A5270/C/23/3317195

77 The Ridings, Ealing, London W5 3DP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Dr Goran Jamal (Appeal A) and Dr Vian Amber (Appeal B) against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 12 January 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the laying of hardstanding in the front garden.
 - The requirements of the notice are: 1. Remove the hardstanding in the front garden; and 2. Remove all resultant debris. Or 3. Alter the front garden to accord with the development granted planning permission under reference number 194903HH subject to its terms and conditions for the 'Resurfacing of front garden' in accordance with drawings titled: Dr Jamal Planting Plan and Dr Jamal Front Garden, attached to the notice; and 4. Remove all resultant debris from the site.
 - The period for compliance with the requirements is three months.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 (as amended). Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decisions

1. Appeals A and B-The appeals are dismissed and the enforcement notice is upheld.

Ground (c) appeals

2. The ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. The burden of proving that the appeals should succeed on this ground rests with the appellants, the relevant test of the evidence being on the balance of probability.
3. The appeal property contains an enlarged detached dwelling, located on a residential street within the Hanger Hill (Haymills) Conservation Area (CA). The notice attacks a hardstanding situated at the front of the property. The hardstanding occupies most of the grounds between the front elevation of the dwelling and the street, apart from planting areas immediately behind the front boundary walls and adjacent to a side boundary. The surface of the hardstanding is mostly formed from a resin bound material finished a light grey colour, with diamond pattern inlays in darker coloured setts. A portion of the ground in front of the front bay window is covered with a porous material.

4. The definition of development set out in s55(1) of the 1990 Act includes the carrying out of building, engineering, mining or other operations in on, over or under land. Building operations include rebuilding and other operations normally undertaken by a person carrying on a business as a builder.
5. The appellants claimed that the hardstanding did not exceed the extent of a previous hard surface at the front of the property. This is not supported however by the evidence. Notably, a copy of an estate agent's sales particulars, purportedly dated 6 June 2014, includes a photograph of the property which shows around a third of the grounds between the dwelling and the street laid to lawn, along with ornamental planting. A Google Earth image of the property, purporting to date from either 6 April or 4 June 2015¹, shows a similar area of lawn and planting at the front of the dwelling. Also, a copy of an architect's drawing supplied, the latest date on which is 16 December 2015, illustrates a similar area of lawn and planting at the front of the property.
6. Laying the hardstanding has involved carrying out works of significant scale and magnitude, extending over most of the grounds at the front of the dwelling, covering the area previously laid to lawn as well as replacing the pre-existing hard surface material. The extent of the works goes well beyond what could reasonably be described as maintenance or repair. What is present at the property following the carrying out of the works is to all intents and purposes a new hardstanding which is significantly greater in its extent than the pre-existing hard surface. The works involved in laying the hardstanding were undertaken by a person employed as a builder. There is a material effect on the external appearance of the dwelling, having regard to the substantial erosion in the area of lawn and the finished materials of the hardstanding, which differ markedly from the pre-existing block paved hard surface.
7. Therefore, in my view and as a matter of fact and degree, the works undertaken to lay the hardstanding have involved operations falling within the definition of development. Planning permission is required for the carrying out of any development of land, having regard to s57(1) of the 1990 Act.
8. At Article 3, Schedule 2, Part 1, The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO), grants planning permission for undertaking certain development within the curtilage of a dwelling. However, the Council's Article 4(2) Direction dated 25 September 1997 means that in the CA, express planning permission is required for specified development that would otherwise be permitted by the GPDO. In particular, express permission is required for the provision of a hardstanding on the road frontage, including the paving over of front gardens, otherwise permitted by the GPDO at Article 3, Schedule 2, Part 1, Class F.
9. Express planning permission has not been granted for the hardstanding. The definition of a breach of planning control in s171A(1) of the 1990 Act includes carrying out development without the required planning permission.
10. Consequently, the appellants have been unable to discharge the burden on them to show that the matters alleged in the notice do not constitute a breach of planning control. The ground (c) appeals fail.

¹ Both main parties supplied the same image with different dates

Ground (d) appeals

11. The ground of appeal is that on the date the notice was issued, no enforcement action could be taken in respect of the alleged breach. The burden of proof and the relevant test applied to the evidence are the same as in the previous ground of appeal.
12. The appellants claimed that the hardstanding was substantially complete by August 2018. In doing so, they sought to rely on s171B(1) of the 1990 Act which, at the time the notice was issued, provided that no enforcement action may be taken after the end of the period of four years beginning with the date on which a breach of planning control consisting in the carrying out without planning permission of operational development was substantially completed².
13. The appellants supplied a letter from a builder, who stated that they had been responsible for the laying of the hardstanding and that the works were fully completed in August 2018. The appellants also supplied a copy of a photograph, purportedly dated 9 October 2018, in which part of the hardstanding, including some of the diamond pattern inlay, is shown in the background.
14. This evidence does little to support the appellants' claim. The builder's statement is unsworn and is lacking in detail. No contemporaneous documentary evidence, such as work records or invoices, which relate to the works that the builder purports to have undertaken at the property, accompanied their statement. It is therefore unclear how the builder can be reasonably sure regarding the date they give for completion of the works. The photograph supplied shows only a very limited portion of the area in front of the property. Accordingly, even if the date of the photograph is accurate it is unclear whether the hardstanding was substantially complete by that time.
15. Moreover, documentary evidence calls the claimed date for substantial completion of the hardstanding into question. On a planning application form dated 16 November 2019, one of the appellants stated that work on the hardstanding commenced on 22 January 2018 but had not been completed³. It is unclear why the application form would state that the hardstanding was incomplete if that was not in fact the case. The appellants offered no explanation in this respect.
16. Consequently, the available evidence is not sufficiently precise and unambiguous in relation to the date when the hardstanding was substantially completed. It follows that the appellants have been unable to discharge the burden on them to prove that no enforcement action could be taken in respect of the hardstanding. The ground (d) appeals also fail.

Conclusion

17. For the reasons given above, I conclude that Appeals A and B should not succeed. I shall uphold the enforcement notice.

Stephen Hawkins

INSPECTOR

² The period was extended to ten years on 25 April 2024

³ Council Ref: 194903HH