



Appeal Decision

Site visit made on 18 December 2024

by **D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC**

an Inspector appointed by the Secretary of State

Decision date: 28 January 2025.

Appeal Ref: APP/T5150/C/23/3326430

91 Goldsmith Lane, London NW9 9AR

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended, (the 1990 Act). The appeal is made by Mrs Loretta Bergonzi-Johnston against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 18 July 2023.
- The breach of planning control as alleged in the notice is without planning permission, the formation of a hard surface to the front garden of the premises (Roe Green Village Conservation Area).
- The requirements of the notice are to:
 - 1) With the exception of the path to the front door, remove the unauthorised hard standing from the front of the premises.
 - 2) Remove all associated items, debris and materials, arising from the removal of the hard surface from the premises. Plant shrubs, grass seed or turf where the hard surface formerly stood.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the 1990 Act. 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 of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

The ground (c) appeal

1. To succeed on ground (c), the appellant must show on the balance of probabilities that the matters alleged do not constitute a breach of planning control.
2. S57(1) of the 1990 Act provides that planning permission is required for the development of land. S55(1) provides a broad definition of 'development', including the carrying out of building, engineering, mining or other operations in, on, over or under land. I must consider, therefore, whether the matters alleged amount to an engineering operation. Engineering operations comprise works with some element of pre-planning that would generally be supervised by a person with engineering knowledge, although the person who carried out the work does not have to be an engineer.
3. The appellant argues that there has been no alteration to the pre-existing hard surfacing to the front garden of the property. However, it is accepted that the previous 'crazy paving' and shingle covering was replaced with flat stone. I saw that stone slabs had been laid throughout the front garden. The works would have required the removal of the previous paving, and the preparation of the ground which may have involved laying a hardcore base. I also saw that the surface materials used are of a relatively high quality, the stone was level and had been properly laid.

4. It is apparent that the alterations required an element of pre-planning and would have been carried out by a person with an appropriate level of engineering knowledge. The works go beyond minor repairs or replacement, and I consider they amounted to an engineering operation for which planning permission would have been required.
5. I must also take account of the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Under Article 3(1) and Schedule 2, Part 1, Class F of the GPDO, the provision or replacement of hard surfacing within the curtilage of a dwellinghouse is classed as 'permitted' development, subject to conditions and limitations. Development is permitted by Class F subject to condition F.2 that requires where (a) the hard surface would be situated between the front elevation of the dwellinghouse and the highway and (b) it covers an area exceeding 5 square metres (sqm), the surface material should be porous, or provision made for run-off to a permeable or porous area within the curtilage of the dwellinghouse.
6. Although no measurements have been provided, it appears that the hard surface covers an area greater than 5 sqm. It is not constructed of porous material and there is no provision for run-off. Consequently, the works cannot benefit from permitted development rights. Moreover, I understand that there was an Article 4(1) Direction (of the GPDO) in force at the time the works were carried out, which would have removed the relevant permitted development rights in any event.
7. I find that the appellant has not shown on the balance of probabilities that the matters alleged do not constitute a breach of planning control. The ground (c) appeal fails, therefore.

The ground (d) appeal

8. To succeed on ground (d), the appellant must show on the balance of probabilities that the matters alleged were substantially completed four or more years prior to the issue of the notice such that it is now too late to take enforcement action.
9. The appellant says that the development was completed in 2019 but there is no evidence in support of this assertion. In contrast, the Council argues that the works were carried out in May 2021. The Council's version of events is supported by images from 'Google Earth' dated April 2020, which show the front garden with what appears to be the previous surfacing.
10. I find that the appellant has not shown on the balance of probabilities that the works were substantially completed four or more years prior to the issue of the notice and, as such, are not immune from enforcement action. The ground (d) appeal fails, therefore.

The ground (a) appeal and the deemed planning application

Main Issues

11. The terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for the formation of a hard surface to the front garden of the premises, which is within the Roe Green Village Conservation Area.

12. The main issues are (1) the effect of the development on the character and appearance of the area, in particular, the Roe Green Village Conservation Area; and (2) whether the development would lead to an increased risk of flooding.

Character and Appearance

13. The appeal property is an attractive terraced house, which is located within a predominantly residential area. The front garden has been covered with stone surfacing, which incorporates a path to the front door. There is a hedge to the front and sides of the garden, which has been clipped and maintained and provides an appropriate level of landscaping and screening.
14. Roe Green Village is a planned estate of cottages, which were constructed in the 'Arts and Crafts' style. The design ethos was to create a traditional garden village¹. The significance of the Conservation Area, insofar as is relevant to the matters before me, is attributed to the estate's distinct 'rural' village feel and well-preserved appearance.
15. Prior to the unauthorised works, the front garden at the appeal property was surfaced with shingle, with narrow planting beds and shrubs. The replacement hard surface does not allow for any planting, aside from the boundary hedge that has been retained. However, the stone surfacing is of a high quality and includes a variation in materials to delineate the pathway. This lessens what might otherwise have been a stark appearance to the front garden, and the design adds visual interest. I disagree with the Council's assessment that the new materials are harsh, highly visible and noticeable. I was able to see the hard surfacing from the front of the house, when looking over the gate, but the works did not stand out in the street scene and were not widely visible from public viewpoints.
16. I appreciate there is no room for planting, aside from the planters and pots that were present when I conducted the site visit. However, the front garden is not extensive, and the majority is screened behind the substantial evergreen or semi-evergreen hedge, which maintains the 'rural' village appearance. The materials used are acceptable in their historic context. The stone slabs do not appear as a modern and intrusive feature that detracts from the estate's distinct village feel. The property retains its attractive and well-preserved appearance. Overall, I am satisfied that the development does not have an adverse effect on the significance of the designated heritage asset.
17. I understand that the Council is seeking to resist alterations to the traditional front gardens that contribute positively to the Conservation Area. However, in this particular case, I find that the works have been executed appropriately and I am satisfied that the development does not have an adverse effect on the character and appearance of the area.
18. Given the above I conclude that, on balance, the proposal would preserve the character and appearance of the Roe Green Village Conservation Area. This would satisfy the requirements of s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, paragraph 212 of the National Planning Policy Framework (December 2024) (the Framework) and would not conflict with policies D4 and HC1 of the London Plan (2021), and policies DMP1 and BHC1 of the Brent Local Plan (2022), and the advice of the Roe Green Village Conservation Area

¹ Roe Green Village Conservation Area Design Guide (2018).

Design Guide (2018) that seek, among other things, to promote good design and to ensure the protection of heritage assets.

Flood Risk

19. The Council is concerned that the unauthorised works will lead to an increase in surface water run-off, which may in turn increase the risk of flooding elsewhere.
20. The appellant explains that the front garden has always been hardcore under shingle, and the 'crazy paving' existed when the property was purchased in 1994. Estate Agent particulars have been provided that describe the front garden as "crazy paved with flower borders". On this basis, it is unlikely that the previous materials were permeable or sufficiently porous to allow water to percolate. The narrow planting beds may have enabled some infiltration of surface water, but this is unlikely to have been significant.
21. Overall, the area of replacement hard surfacing is not extensive and, given the nature of the previous surface treatment, I do not consider that any increase to surface water run-off would be material. It would be highly unlikely to increase flood-risk elsewhere. I appreciate that small cumulative changes would have an adverse effect over time. However, the site-specific circumstances in this case are such that I am satisfied the development would not contribute to an increased risk of flooding. This would accord with paragraph 173 of the Framework, and policy BSU13 of the Brent Local Plan.

Conclusion

22. I conclude that the development would be in accordance with the development plan as a whole. The ground (a) appeal succeeds, therefore.

Conclusion

23. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The enforcement notice will be quashed.
24. In these circumstances the appeal on ground (f) does not fall to be considered.

Formal Decision

25. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the formation of a hard surface to the front garden at 91 Goldsmith Lane, London NW9 9AR as shown on the plan attached to the notice.

D Moore

Inspector