



Appeal Decision

Site visit made on 2 August 2025

by **A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 18 August 2025

Appeal Ref: APP/N5660/C/24/3339309

55 Selsdon Road London SE27 0PQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the “1990 Act”).
- The appeal is made by Mr Andrew Brown against an enforcement notice issued by the Council of the London Borough of Lambeth.
- The enforcement notice was issued on 12 January 2024.
- The breach of planning control as alleged is the erection of a split level raised and wooden framed, hard-surfaced platform and associated enclosure fencing (excluding the boundary enclosure) to the rear of the existing single storey rear extension (“the unauthorised raised platform and fencing”) and the surfacing of the remaining rear garden with artificial grass (“the unauthorised artificial grass”).
- The requirements of the enforcement notice are to: (1) Remove the unauthorised raised platform and fencing from the premises, (2) remove the unauthorised artificial grass from the premises and fully re-seed or turf the garden and (3) remove all associated waste and debris resulting from compliance with the above requirements, from the premises.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (d), (a) and (f) of the 1990 Act.

Summary decision: The enforcement notice is quashed after a correction and variation, and planning permission is granted in the terms set out below in the formal decision.

Ground (c)

1. The appellant does not challenge the fact that the erection of a split level raised and wooden framed, hard-surfaced platform and associated enclosure fencing amounts to development requiring express planning permission. The concern relates to the artificial grass. The argument is the work involved in its installation amounts to permitted development, but the Council disagree and argue that the laying of the artificial grass amounts to “development” requiring approval. The principal issue for my analysis is whether express planning permission required for the laying of the artificial grass.
2. The word “development” is defined in s55(1) of the 1990 Act and includes the carrying out of building, engineering or other operations. The Act also explains when express planning permission is required. However, there is a deemed planning permission for development relevant to dwellinghouses, described as householder permitted development rights, by virtue of article 3, schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).
3. Usually, hard surfaces incidental to the enjoyment of a dwellinghouse fall within Part 1, Class F to Schedule 2 of the GPDO and, provided certain limitations and conditions are met, express planning permission is not required. Irrespective of whether the artificial grass can reasonably be described as a permeable hard surface, there is a much bigger problem for the appellant. Article 2) of the GPDO – Interpretation - expressly declares that a “dwellinghouse” does not include a

building containing one or more flats, or a flat contained within such a building. The relevant facts clearly show no. 55 comprises two self-contained flats. Therefore, permitted development rights do not apply. That is not the end of the matter.

4. The Council vehemently argues that the work involved in laying of the unauthorised artificial grass amounts to an engineering operation. The latter is not defined in the relevant legislation, but case law assists in interpreting what kind of works might fall within the scope of an engineering operation, and a judgment that immediately springs to mind is *Eatherley*¹. Although not on all fours with this appeal, the judgment reviews some of the previous cases when considering if operations are substantive to constitute an engineering operation as a matter of fact and degree.
5. *Ewen* and then *Fayrewood*² usefully remind me that an engineering operation involve works with some element of pre-planning, which would generally be supervised by a person with engineering knowledge. It is not necessary for the operations to be so supervised, meaning that the appellant or person who carried out the work does not have to be an engineer. The key message from these judgments and the findings therein serve to illustrate that with each case it is a matter of fact and degree based on the circumstances.
6. Turning to the facts of this case, the bundle of evidence includes photographs prior to, and during the installation of, the artificial grass to the rear of no. 55. The Council argue that the artificial grass fundamentally alters the character of the surface and effectively constitutes an engineering operation for laying of a hard surface. For the following reasons, I disagree.
7. The work included removal of the existing turf, but the images of the rear garden indicate the existing ground was generally flat or level. Some soil may have been excavated, but that was probably likely to have been limited in extent and scale given the size of the area covered by the artificial grass. The work involved fixing a sub membrane but there is nothing before me to indicate the work required the use of heavy plant and machinery. The evidence presented does not suggest the laying of the artificial grass required specialist or engineering knowledge. I acknowledge that artificial grass does not appear like natural grass in texture thus possessing a different quality. Nevertheless, on the particular facts of this case, the work involved in the installation of the artificial grass were minor and not substantive enough to physically alter the profile of the rear garden.
8. I should point out that each case must be considered upon its individual merits. As a matter of fact and degree the particular circumstances suggest the limited and minor nature of the operations involved in the surfacing of the rear garden with artificial grass did not fall within the scope of an engineering operation. In other scenarios, however, the circumstances may be different.
9. For all the above reasons and on the balance of probability, ground (c) succeeds in part, and I will delete reference to the artificial grass from the allegation.

Ground (d)

10. The evidence indicates a raised platform existed from 2006 and the appellant maintains that this structure has been refurbished. However, as illustrated by the Council's photographic evidence, its investigations reveal the work involved the

¹ A recent case that comes to mind is *Eatherley v Camden LBC & Ireland* [2016] EWHC 3108 (Admin); [2017] JPL 504.

² *Ewen Developments v SSE* [1980] JPL 404 and *Fayrewood Fish Farms v SSE* [1984] JPL 587.

erection of a new structure. At the time when the notice was issued, the raised platform included split-levels and close-boarded timber fencing, which facilitates the subdivision of the rear garden. The building work comprised in the creation of this raised and wooden framed hard-surfaced platform and fence was substantially completed in 2022, which is after the relevant date - 12 January 2020.

11. Therefore, the Council are correct in asserting that the development comprising the erection of a raised and wooden framed, hard-surfaced platform and associated enclosure fencing is not immune from enforcement action and ground (d) fails.

Ground (a)

12. The terms of the deemed application are directly derived from the allegation. As I have deleted reference to artificial grass, my consideration will focus on the erection of a raised and wooden framed, hard-surfaced platform and associated enclosure fencing. The single **main issue** is the effect of the development upon the living conditions of the occupiers of adjoining properties having regard to overlooking.
13. The weather was pleasant at the time of my visit. So, I had the opportunity to view the site's surroundings by standing on the raised platform as well as observing the surroundings whilst sitting down on a chair. Given the urban and compact nature of the locality, there are numerous windows to habitable rooms in rear elevations. Most of these openings are of similar scale and appearance. Observing from a window is likely to be different than being outside on the terrace in the open air. Nonetheless, it is likely residents who utilise upper floors for human habitation would also be able to overlook adjoining gardens and the rear elevations without significant visual interruption. Given the built-form, design and setting of the properties, in my planning assessment, there is already significant degree of overlooking in this locality.
14. In that context, given the distance and space between the appeal property and dwellings along Wolfington Road, I do not consider the raised platform results in loss of privacy to these properties. That said, standing on the raised platform at the rear of no. 55 allows unimpeded views into the rear garden and kitchen area to no. 57, especially when looking back at the property and standing at the site's boundary. People standing or sitting out on the raised platform are likely to be noticed and, in turn, they directly overlook the adjoining garden. However, views are reduced when standing further away from the adjoining boundary and diminished if sat down.
15. The evidence shows there was a raised platform located to the rear of no. 55 albeit it has been significantly altered. However, subject to additional landscaping along the boundary with no. 57, in my assessment, the perception of being overlooked can be sufficiently reduced. There seems to be sufficient space to implement a landscaping scheme without the need to remove the existing fence. Over time, the planting would soften the impact of the development and reduce direct overlooking from the raised platform provided details of type and height of planting is agreed. It would assist in addressing the perception of being overlooked, especially when the neighbours wish to use their garden for amenity purposes.
16. A suitable compromise, at less expense and destruction, is to consider imposing a landscaping condition which would address the conundrum and make the development acceptable in planning terms. If a suitably worded condition cannot be

imposed, then planning permission would need to be refused. In that context, where development has taken place, it is not possible to impose a condition precedent or require that outstanding details are agreed before the development is commenced or occupied, no matter how important the details are. Thus, where a condition is imposed to require the submission and approval of a scheme in respect of development that already exists, it must include some sanction or mechanism for enforcement in the event of non-compliance.

17. The key feature of the retrospective condition is that the operational development permitted must be removed if the required scheme is not submitted within the prescribed timescale, or it is submitted on time but not approved and an appeal against the Council's refusal to approve the details submitted pursuant to the condition is not made on time or an appeal is dismissed, or the scheme is submitted and approved but not implemented within the prescribed timescale.
18. I consider a suitably worded condition requiring the submission and implementation of an approved landscaping scheme, which meets the six tests, can be imposed. Subject to this condition, and contrary to the Council's arguments, in my planning judgment, the development does not materially conflict with policy Q2 and Q14 of the Lambeth Local Plan (2021), as a whole. This is because, subject to acceptable landscaping and implementation scheme as per the condition, acceptable standards of privacy are provided and undue sense of enclosure or unacceptable levels of overlooking (or perceived overlooking) will be addressed.

Overall conclusions

19. I conclude that the appeal on ground (c) succeeds in part, and the notice will be corrected because of my findings on matters of fact.
20. I further conclude the appeal on ground (d) in relation to the corrected notice fails.
21. For the above reasons and having regard to all other matters raised, I conclude that the deemed application on ground (a) should be allowed in respect of the erection of the raised platform. As the notice will be quashed after correction, ground (f) does not need to be considered.

Formal decision

22. It is directed that the enforcement notice be corrected and varied by:
 - 1) Delete the following text at section 3) the matters which constitute a breach of planning controls, "...and the surfacing of the remaining rear garden with artificial grass (*the unauthorised artificial grass*)", and
 - 2) In section 5) what you are required to do, delete subsection 2) which states the following: *Remove the unauthorised artificial grass from the premises and fully re-seed or turf the garden.*
23. Subject to the correction and variation, 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 Act, for the development already carried out, namely the split level raised and wooden framed, hard-surfaced platform and associated enclosure fencing (excluding the boundary enclosure) to the rear of the existing single storey rear extension, subject to the following condition:

- 1) The split level raised and wooden framed, hard-surfaced platform and associated enclosure fencing (excluding the boundary enclosure) to the rear of the existing single storey rear extension hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 6 months of the date of this decision a scheme for landscaping, including plant height and species, located along the boundary with no. 57 Selsdon Road, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

A U Ghafoor

INSPECTOR