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## Appeal Decision

Site visit made on 30 January 2024

**by D Fleming BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 February 2024**

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### **Appeal Ref: APP/B5480/C/22/3307597 26/26a Tudor Drive, Romford RM2 5LH**

- 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 appeal is made by Mr Barry Fitzgerald against an enforcement notice issued by the Council of the London Borough of Havering.
  - The enforcement notice was issued on 26 August 2022.
  - The breach of planning control as alleged in the notice is without planning permission, the laying of a hard surface in the front curtilage.
  - The requirements of the notice are:
    - (1) Remove the hard surface in the approximate area hatched red on the plan attached to the notice; and
    - (2) Remove all materials, rubble and debris from the site as a result of taking step (1).
  - The period for compliance with the requirements is four months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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### **Decision**

1. 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 Town and Country Planning Act 1990 as amended for the development already carried out, namely the laying of a hard surface in the front curtilage at 26/26A Tudor Drive, Romford RM2 5LH as shown on the plan attached to the notice and subject to the following condition:
  - 1) The hard surface hereby permitted shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
    - i) Within 3 months of the date of this decision a soft landscaping scheme to replace the turfed area 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 10 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.

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.

## **The ground (a) appeal and the deemed application**

### Main Issues

- 2. The main issues are the effect of the development on (i) the character and appearance of the area; and (ii) whether the design of the hard surface area results in an increased risk of flooding.

### Reasons

#### *Character and appearance*

- 3. The appeal site comprises a semi-detached two storey building laid out as two purpose built flats. There is a shared front garden and a shared drive to the side of the building which leads to a pair of garages and a rear garden. This arrangement is not dissimilar to several other purpose built flats along the road that resemble pairs of semi-detached houses.
- 4. Tudor Drive and surrounding residential roads are part of a pleasant, inter war estate with some of the roads containing grass verges and street trees. Street trees can be found along Tudor Drive but the verge appears to have been filled in to allow for partial pavement parking. Where front gardens remain, they are well maintained and contribute to the attractive character and appearance of the area.
- 5. The appellant has removed crazy paving that previously surfaced the front garden and laid a new hard surface comprising concrete on a hardcore base to provide a hard standing for off street parking. The development is similar to others in the road and, as such, does not look out of place. Some gardens, even though not used for off street parking, have been hard surfaced, presumably to make maintenance easier, such as at No 22. There is no uniformity and much variety in how the gardens have been altered over time.
- 6. The Council are concerned that the development has resulted in a loss of greenery and biodiversity or at least the potential for such. At my site visit I noticed some hard surfaced front gardens also contained some planting such as a shrub bed under the bay window or a planted strip marking the boundary of the property.
- 7. It appears that the appeal development was incomplete when the notice was issued as the hardstanding has now been enclosed on two sides by a 1 metre high fence and a narrow landscaping strip has been provided between the fence bordering the pavement and the hard surface. The appellant has turfed

this on a temporary basis whilst awaiting the outcome of the appeal and has indicated his willingness to plant shrubs there.

8. I find imposing a condition requiring landscaping to be carried out would overcome the Council's concerns and would preserve the character and appearance of the area. With such a condition in place, the development would accord with Policies 7, 26 and 27 of the Havering Local Plan 2016-2031, adopted November 2021 (HLP). These require high quality design and for development to maximise the opportunity for greening through tree planting and other soft landscaping.
9. The development would also accord with Policies D4, D8 and G6 of The London Plan, The Spatial Development Strategy for Greater London March 2021 (TLP). These policies also require high quality design and that sites be improved for biodiversity net gain. In addition, they require that development for on street parking should ensure space for green infrastructure. Policy D1 from TLP is not relevant to my consideration as it is directed at carrying out area assessments to understand capacity for growth.

#### *Flooding*

10. The appeal site lies within Flood Zone 1. When the notice was issued the design of the hard surface meant surface water runoff would go straight into surface water drains. Flooding often occurs because drains cannot cope with the amount of water flowing into them during extreme weather events and, as such, the development conflicts with policies that seek to prevent this.
11. However, the appellant has now changed the design of the hard surface to incorporate a soak away and a turfed area. Photographs show how this was achieved and I saw the changes at my site visit. Following these alterations, the development now accords with Policy 32 of the LP and Policy SI 12 of TLP which require developments to minimise and mitigate flood risk.
12. The appeal on ground (a) therefore succeeds and the appeal on ground (g) does not need to be considered.

#### *Condition*

13. As the construction of the hard surface is now substantially complete there is no need for any conditions other than the landscaping condition. This condition is drafted in a particular form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective granted permission it is not possible to use negatively worded conditions precedent to secure the subsequent approval and implementation of outstanding detailed matters, as the development has already taken place.
14. These conditions therefore provide for the loss of the effective benefit of the granted planning permission where the detailed matters in question are not submitted for approval during the time set by their condition, approved (either by the local planning authority or by the Secretary of State on appeal) and then implemented in accordance with an approved timetable. Should the requirements of the conditions not be met in line with the strict timetable, then the planning permission falls away.

**Conclusion**

15. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the laying of a hard surface in the front curtilage, as described in the notice. The appeal on ground (g) does not therefore fall to be considered.

*D Fleming*

INSPECTOR