The Planning Inspectorate

Appeal Decision

Site visit made on 12 July 2016

by Chris Preston BA (Hons) BPl MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 July 2016

Appeal Ref: APP/G5750/C/16/3148578
929 Romford Road, Manor Park, London E12 5JT

- 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 Ilyas Patel against an enforcement notice issued by the Council of the London Borough of Newham.
- The Council's reference is 16/00094/ENFNOT.
- The notice was issued on 18 March 2016.
- The breach of planning control as alleged in the notice is: Without planning permission the erection of a canopy.
- The requirements of the notice are: (1) remove the canopy (as shown edged in yellow on the photograph attached to appendix 1 (of the enforcement notice)). (2) Remove from the site all debris arising from compliance with the above step.
- The period for compliance with the requirements is three months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The Appeal on Ground (c)

2. The appeal was submitted on ground (c) alone. An appeal on ground (c) is made on the basis that there has not been a breach of planning control. The alleged breach of control relates to a canopy that has been attached to the shopfront at 929 Romford Road. The appellant does not dispute that the canopy has been erected and I was able to observe it myself at an unaccompanied site visit.

3. Furthermore, the statement provided by the appellant does not dispute the fact that the erection of the canopy amounted to operational development for which planning permission would have been required. The structure is permanently affixed to the shop front and I consider that its installation amounted to a building operation which constitutes 'development' for the purposes of section 55 of the Town and Country Planning Act 1990 (the Act). It would not be a straightforward operation and, as noted by the appellant, it was installed by professional tradesman.

4. Permitted development rights exist for certain alterations and extensions to retail premises, under the terms of Class A, Part 7 of Schedule 2 of the Town

and Country Planning (General Permitted Development) Order 2015 (the GPDO). However, development which extends forward of an existing shop front, as is the case in this instance, does not constitute 'permitted development' by virtue of conditions attached to the GPDO.

5. Consequently, the canopy amounts to development and does not constitute 'permitted development'. Planning permission would be required for the installation of the canopy. No planning permission has been granted and the canopy represents a breach of planning control. Therefore, the appeal on ground (c) must fail.

The Appeal on Ground (d)

6. The appellant did not indicate that he wished to appeal on ground (d) by ticking the relevant box on the appeal form. However, within his brief statement he suggests that the canopy has been in situ for 'almost five years'. An appeal on ground (d) is made on the basis that, at the date when the notice was served, it was too late to take enforcement action against the matters stated in the notice. That ground of appeal relates to the time limits for taking enforcement action, as prescribed by s171B of the Act. For operational development no enforcement action can be taken after the end of the period of four years beginning on the date at which the operations were substantially completed.

7. In any event, no evidence has been submitted in support of the claim made by the appellant. The canopy was not in place in July 2011 on the photograph provided by the Council and that was taken less than five years from the date the appellant submitted his statement, thereby casting doubt on the claim in that regard. When making an appeal on ground (d), the onus falls on the appellant, on the balance of probability, to demonstrate the case. Given the absence of any corroborative evidence to support the assertion that the canopy has been in place for more than 4 years I am not satisfied, on the evidence before me, that the canopy is immune from enforcement action by virtue of the time limits imposed by s171B of the Act. Therefore, the appeal on ground (d) fails.

Other Matters

8. The appellant has also made reference to the quality of the shopfront and the aesthetical effect on the surrounding area. Those matters would be relevant to any consideration of the planning merits of the development, had an appeal been made on ground (a). However, the requisite fee was not received and I am unable to consider the planning merits of the proposal in the absence of a ground (a) appeal.

Conclusion

9. For the reasons given I conclude that the appeal should not succeed.

Chris Preston

INSPECTOR