

Appeal Decision

Site visit made on 30 September 2016

by John Whalley

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

Decision date: 5 October 2016

Appeal ref: APP/K5600/C/16/3142680
14 Hollywood Road, London SW10 9HY

- The appeal was made by Hope Catering Limited under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the Royal Borough of Kensington and Chelsea Council.
- The notice was issued on 10 December 2015.
- The breach of planning control alleged in the notice was: Without planning permission, the installation of plant equipment and associated trellising shown outlined in red on the photograph attached to the notice, containing two air conditioning units, a fan supply, WC extract, boiler flue and a small chiller.
- The requirement of the notice is to: Remove all plant equipment including the two air conditioning units, fan supply, WC extract, boiler flue, small chiller and the associated trellising shown outlined in red on the photograph attached to the notice, make good the external elevations of the building and remove all resultant debris from the land.
- The period for compliance with the requirement is one month after the date the notice takes effect.
- The appeal was made on grounds (c), (f) and (g) as set out in Section 174(2) of the 1990 Act. Ground (d) was added later.

Summary of Decision: The enforcement notice is varied and upheld

Appeal property

1. The appeal concerns the ground floor restaurant of the property at No. 14 Hollywood Road, Fulham. No. 14 lies within the Boltons Conservation Area. The Council served the enforcement notice against equipment fitted on to or immediately adjacent to the rear wall of No 14.

The appeal on ground (c)

2. The appeal on ground (c) asserts that there has not been a breach of planning control. The Appellants said that part of the equipment described in the enforcement notice was granted planning permission in 1990 under ref: TP/89/2093, (3 air conditioning units to provide ventilation). The Council said drawing 100526/S01 attached to planning permission PP/11/3219 of 20 January 2012 showed 2 air conditioning units, (not 3), on the upper terrace as "existing". They therefore accepted that the 2 units enforced against were in place at that time. The Council said I could correct the notice by deleting

reference to the 2 air conditioning units. It was unclear as to whether those units were installed following an earlier grant of the TP/89/2093 planning permission and that there is success on ground (c) to that extent, or whether the 2 units have become immune from enforcement action by the passage of time. Whichever is the case, I delete reference to the 2 air conditioning units from the enforcement notice's allegation and from its requirement. Also, as the photograph attached to the notice shows, the large kitchen fume extractor vent that runs up the rear wall of No. 14 was accepted by the Council as having been in place for more than 4 years before the notice was issued. It was therefore excluded from the enforcement action.

3. What was left for consideration on the ground (c) appeal was the external air intake filter, the toilets' air extractor pipe and silencer and the boiler flue as shown just to the left of centre on the photograph attached to the notice. The timber trellising that screens the air filter and part of the air extractor pipe and boiler flue is part of the works enforced against.
4. The question to be determined is whether the remaining works enforced against amounted to development that required planning permission. Section 55(1) of the Act defines "development," as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. However, no case was made to show that the works were of such a minor nature as to be insignificant or in any other way did not amount to development requiring planning permission. In my view, although the works are small, they did, as the Council pointed out, amount to additions to the building; their erection and fitting constituting operations normally carried out by a builder.
5. The appeal on ground (c) fails.

The appeal on ground (d)

6. An appeal on ground (d) asserts that the development has become immune from enforcement action by the passage of time. Section 171B(1) of the Act says: *"Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed."*
7. I separated off the large kitchen air extractor duct and the 2 air conditioning units from the enforcement notice's allegation above. No case was made in respect of the toilets' air extractor pipe and silencer and the boiler flue on ground (d). The appeal on ground (d) must fail.

The appeal on ground (f)

8. An appeal on ground (f) claims that the notice's requirement is too onerous. The Appellants said that revised environmental policy criteria had necessitated the installation of the appeal plant to serve the restaurant. Flues could not be installed internally. If they could not be used, the restaurant would close with the loss of 15 jobs. A better answer would be to screen the appeal equipment with large and mature plants.
9. The Council said that large planters would be an addition to the unduly dominant and overbearing plant equipment and associated trellising that was

fundamental to the reason for refusing planning permission on a recent application to retain the works.

10. An enforcement notice should set out the steps required to be taken, or the activities which must cease, to achieve, wholly or partly, the purposes of either:
 - (a) remedying the breach of planning control. That is, making any development comply with the terms of any planning permission, discontinuing the use of any land, or restoring the land to its condition before the breach took place; or,
 - (b) remedying any injury to amenity caused by the breach.
11. An enforcement notice should clearly disclose exactly what the planning authority seek to achieve by their notice and whether the purpose of the requirements falls under s.173(4)(a) or (4)(b). However, the Courts have held that the “or” that separates s.173(4)(a) from (4)(b) is not entirely disjunctive, (*SSTLR v Wyatt Brothers (Oxford) Ltd and Oxfordshire CC [1997] QBD*).
12. In this instance, the Council sought the removal of the unlawful works as a means to remedy the harm to the visual amenities of the area. They said the appeal works did not preserve or enhance the character or appearance of the Conservation Area. That comes under (b) purposes above. It is not for me, in the context of a ground (f) appeal where there is no ground (a) appeal, to consider the merits of the retention of the works, with or without remedial landscaping work. I can only decide whether or not the notice’s requirement is too onerous to remedy any injury to amenity. In my view, it is not. Even where the injury to amenity is small, because s.173(4)(b) refers to “any” injury, I cannot come to a view on whether a small injury to amenity is acceptable unless ground (a) was pleaded. A reduction in the notice’s requirement would mean the inappropriate issue of a planning permission under the terms of s.173(11) of the Act. The appeal on ground (f) fails.

The appeal on ground (g)

13. The Appellants said they should be given more time to submit a revised planning application to show suitable screening and planting. To help in that matter, I increase the period for compliance to 9 months. To that extent, the appeal on ground (g) succeeds.

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14. The enforcement notice is varied by the deletion of the words “two air conditioning units,” in lines 3 and 4 of para. 3 on page 1 of the notice and the deletion of the words “two air conditioning units,” in line 2 of para. 5 on page 2 of the notice. The enforcement notice also is varied by the deletion of the words “One calendar month” in the last line of para. 5 on page 2 of the notice and the substitution therefor of the words: “Nine months”. Subject to those variations, the enforcement notice is upheld.

John Whalley

INSPECTOR