
Appeal Decision

Site visit made on 8 November 2016

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 5 December 2016

Appeal Ref: APP/T5150/C/16/3156196

Mezzoroma, 65 Walm Lane, London NW2 4QR

- 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 Buran Gursoy against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 25 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an extension to rear of the ground floor premises (restaurant).
 - The requirements of the notice are Step 1 Demolish the unauthorised extension to the rear of the ground floor of the premises (restaurant). Step 2 remove all associated items, debris and materials arising from this demolition from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

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

The ground (b) appeal

2. Under a ground (b) appeal the onus of proof falls upon the appellant to show that the alleged breach of planning control has not occurred as a matter of fact. In this case the Council allege the erection of an extension to the rear of the premises. The appellant is of the view that an extension has not been built and briefly states that the sitting out area in the rear yard of the premises has been covered with plastic sheets supported on a light timber structure.
 3. The meaning of development is set out in Section 55(1) of the Town and Country Planning Act 1990 and includes the carrying out of building, engineering, mining and other operations, in, on, over or under land. Section 55(1A) confirms that such operations include structural alterations of, or additions to, buildings and other operations normally undertaken by a person carrying on business as a builder.
 4. At the site visit I saw that timber posts have been fixed to the boundary of the former yard and two posts have been fixed in the middle of the enclosed area. These support a timber grid which acts as a lean-to roof covering the entire area. The grid has been overlaid with rigid, plastic, corrugated sheeting and less rigid, plastic sheeting fills the gaps between the site boundaries and the lean-to roof. Electric heating and an air conditioning unit are attached to the roof and the enclosed area has been laid out with tables and chairs.
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5. The structural alterations undertaken by the appellant are clearly intended to remain in situ and have a degree of permanence as evidenced by the painting of some of the timbers and the provision of heating. I consider the effect of these substantial alterations is to create an extension to the premises as they provide an additional seating area that is light, warm and dry. It is therefore concluded that the evidence supports the allegation that an extension has been built as a matter of fact. The appeal on ground (b) therefore fails.

The ground (g) appeal

6. The ground (g) appeal is that the three month time period given to comply with the requirements of the notice is too short. However, the appellant does not state what he considers to be a reasonable time period, other than explaining that he would like 'some time' as he is preparing a planning application to discuss with the Council. The Council submit that the occupiers of neighbouring properties have expressed concerns about the development.
7. The time period given for compliance with the enforcement notice is to allow for the unauthorised development to be removed. In the absence of a suggested alternative timeframe, I consider the three month period is sufficient to remove the structural alterations that have been carried out, having regard to the continuing and on-going harm caused by the alterations. The appeal on ground (g) therefore fails.

Conclusion

8. For the reasons given above I consider that the appeal should not succeed.

D Fleming

INSPECTOR