

Appeal Decision

Site visit made on 27 September 2016

by Janine Townsley LLB (Hons) Solicitor (Non-practising)

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

Decision date: 19 December 2016

Appeal Ref: APP/P4605/C/16/3151002

147-149 Fentham Road, Aston, Birmingham, B6 6LX.

- 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 Mohammed Nazir against an enforcement notice issued by Birmingham City Council.
 - The Council's reference is 2012/0928/ENF.
 - The notice was issued on 30 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission the use of the premises for a mixed use as a mosque and madrassah, the erection of a 3 storey building in the approximate position marked blue on the attached plan, the erection of a staircase and platform in the approximate position marked yellow on the attached plan, the erection of metal fencing in the approximate position marked brown on the attached plan and the erection of detached containers in the approximate position marked green on the attached plan.
 - The requirements of the notice are to 1. demolish the building marked in blue on the attached plan, including the metal staircase and platform and remove the demolished materials from the site; 2. remove the metal fencing and detached containers from the site.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) 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.
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Decision

1. The appeal is allowed on ground (g), and the enforcement notice is varied by the deletion of four months and the substitution of nine months as the period for compliance. Subject to these variations the enforcement notice is upheld.

Procedural Matter

2. At the time of my site visit, the metal staircase and platform and the detached containers referred to in the enforcement notice had been removed from the appeal site.
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Reasons

The appeal on Ground (f)

3. This ground of appeal is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
4. By requiring the demolition of the building it is clear that the Council are seeking to remedy the breach of planning control. The ground (f) appeal is predicated upon the assertion that the requirements exceed that which is necessary to comply with a planning permission granted in 2011¹ (the 2011 permission). The case for the appellant is that whilst there is a difference between what was approved and what has been built, that alterations could be made to the appeal building which would avoid the need for its demolition.
5. There is no ground (a) appeal before me and therefore it is not possible to consider the planning merits of the 2011 permission. Furthermore, condition No. 10 states that the development permitted shall be begun before the expiration of three years from the date of the permission, that being 4th August 2011. There is nothing before me to suggest that the 2011 permission has been implemented. Accordingly, I must conclude that the 2011 permission is time expired and cannot now be implemented. It is a matter for the appellant if he wishes to submit a scheme to the Council for consideration. This is referred to further in relation to the ground (g) appeal below.
6. For these reasons, I conclude the steps as set out in the enforcement notice are necessary to remedy the breach and accordingly, the appeal on ground (f) fails.

The Appeal on Ground (g)

7. This ground is that the time given to comply with the notice is too short.
8. The appellant has claimed that the alterations to the building would be likely to take up to nine months once agreement has been reached. This, however, is based on an assumption that consent be granted for the works of alteration. For the reasons stated above, there is no scheme before me to consider and the 2011 permission has since expired.
9. Nevertheless, I consider it implicit in the appellant's ground (g) appeal that additional time is sought to seek a planning permission on site. In these circumstances I have taken into account the additional time which would be required to submit an application to the Council and carry out works should permission be secured. Nine months is a realistic period to allow for this.
10. Accordingly the appeal is allowed on ground (g) only. I shall amend the enforcement notice by the deletion of four months and the substitution of nine months as the period for compliance. Subject to the this variation alone, I conclude the enforcement notice should be upheld.

Janine Townsley

Inspector

¹ 2010/04241/PA