
Appeal Decision

Site visit made on 20 February 2018

by David Richards BSocSci DipTP MRTPI

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

Decision date: 14 March 2018

Appeal Ref: APP/M3455/C/17/3179571

**Car Wash at Goldenhill Working Mens Club, Kidsgrove Road,
Stoke-on-Trent, ST6 5SH**

- 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 Top Gear Car Wash against an enforcement notice issued by Stoke-on-Trent Council.
 - The enforcement notice, numbered ENF/17/045, was issued on 8 June 2017.
 - The breach of planning control as alleged in the notice is 'without planning permission, the erection of a timber-framed open-sided canopy'.
 - The requirements of the notice are: 1. Remove the timber framed open-sided canopy from the land. 2. Make good any damage caused to the portacabin situated on the land as a result of compliance with requirement 1 above.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) c) 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 appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

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

Reasons

Appeal on ground c)

2. The appellant considers that the wooden canopy is not a structure. It is argued that the canopy is mounted on wheels which can be moved within minutes and has no permanence.
3. There has been a canopy on the site since at least December 2014, when a previous Inspector visited the site in connection with a previous retrospective planning application. The application was refused, the Inspector concluding that 'the canopy does not respond well to the overall character and appearance of the surrounding area' and that it conflicted with relevant planning policies¹. An appeal against a previous enforcement notice with similar requirements to the present one was dismissed and the enforcement notice upheld².

¹ APP/M3455/A/14/2227372 dated 15 January 2015

² APP/M3455/C/15/3130368 dated 18 December 2015

4. Following dismissal of the second appeal, the canopy was altered to be movable and was relocated within the overall Goldenhill Working Mens Club site, such that it was outside of the site identified within the red edge area of the enforcement notice plan. The notice had technically been complied with.
5. The appeal on ground c) turns on whether the canopy amounts to a building or structure, for which planning permission is required. The Council drew attention to the relevant case law³ in which three primary factors were identified as being relevant to the assessment: size, permanence, and physical attachment.
6. With regard to size, the structure consists of two bays and is constructed of timber posts, with a roof made of transparent corrugated sheeting. Although it is open sided, it has a substantial presence on the site, with the general appearance and characteristics of a permanent structure.
7. Turning to consider the issue of permanence, the framework has been mounted on wheeled trolleys. The roof has been extended over the adjacent portacabin to prevent wind getting under the canopy and provide some stability in windy conditions. It appears that the transparent sheets of the roof extension are fixed to heavy timber beams which rest on, but are not attached to, the portacabin.
8. It is evident that the canopy was erected on the site, and was originally a permanent structure. Following the modification referred to above I acknowledge that it would be relatively straightforward matter to move the structure within the site, or to dismantle and remove it altogether. However in terms of the operation of the site, the current positioning adjacent to the portacabin and the installed site drainage is critical, for functional reasons, and for site safety and the stability of the canopy. Without the ability to rest the timber beams on the portacabin, the canopy would in my view be highly unstable. In my assessment, the positioning of the canopy within the site is, for all practical intents and purposes, fixed such that it would not serve its intended purpose if moved from its present position.
9. To my mind, this constitutes a high degree of permanence and physical attachment, notwithstanding the small wheeled trolleys on which the canopy is now mounted. I note that when the Council requested a demonstration of the mobility of the canopy during an unannounced site visit, the operator stated that it would require 6 people to move it. To my mind the mounting on wheels was in effect no more than an expedient carried out in response to the planning history of the site, rather than being indicative of an intention to make the canopy genuinely moveable.
10. Accordingly, I find that, as a matter of fact and degree, the canopy which has been erected is a building as defined in Section 336(1) of the Town and Country Planning Act 1990 and its erection was a building operation constituting development as defined by Section 55 (1) of the Act. No case has been made that the structure is permitted development and so, in the absence of any relevant planning permission, I find that there has been a breach of planning control. Accordingly, the appeal on ground c) fails.

³ Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1QB 385

Appeal on ground g)

11. The appellant states that 'to get a replacement would take months'.
12. While a permanent replacement of a higher standard of design may be considered acceptable, it would be for the Council to consider this in the first instance, and such matters are not within the purview of this appeal. I acknowledge that the Appellant may be inconvenienced if the structure has to be removed within the specified timescale. However, the appeal is concerned with a breach of planning control that has now been ongoing for a considerable period. To my mind the Appellant has had ample opportunity to seek a more acceptable solution which meets the business needs of the operation. There is no practical obstacle to complying with the requirements of the notice within the specified time and accordingly the appeal on ground g) fails.

David Richards

INSPECTOR