



Appeal Decision

Site visit made on 5 August 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2019

Appeal Ref: APP/K5600/C/18/3209150

1 St Luke's Mews, London W11 1DF

- 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 John Ryle against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 3 July 2018.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the installation of timber decking on top of the existing mansard roof extension.
 - The requirements of the notice are:
Remove the unauthorised decking together with all associated fixtures and fittings from the flat roof area of the mansard roof extension at 1 St Luke's Mews, London W11 1DF and make good the land.
 - The period for compliance with the requirements is 2 months.
 - 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 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.

Main Issue

2. The main issue is whether the timber decking alleged in the notice constitutes a breach of planning control.

Reasons

3. Section 57 of the Act provides that planning permission is required for the carrying out of any development of land. Section 55 of the Act defines development as including the carrying out of building, engineering, mining or other operations in, on, over or under land, whilst Section 55(1A) says that for the purposes of this Act "building operations" includes—
 - (a) demolition of buildings;
 - (b) rebuilding;
 - (c) structural alterations of or additions to buildings; and
 - (d) other operations normally undertaken by a person carrying on business as a builder.

4. A building is defined by s.336 of the Town and Country Planning Act 1990 as including any structure or erection and any part of a building, but not plant or machinery comprised within a building.
5. The decking occupies nearly all of the flat mansard roof of the property, accessed by a ladder from a balcony on the floor below. The total area covered by the decking amounts to about 25m². The decking comprises some 13 sections, each measuring about 1.8m by 0.7m. The sections are comprised of a number of slatted planks attached to timber lateral and longitudinal members beneath. The height of each section varies, to ensure that each is roughly level, and one of the larger sections measured about 30cm high at one end, and 15cm high at the other. A smaller section has smaller pieces of supporting timberwork about 5cm high. Each of the sections sits on the roof surface, resting on some 18 round plastic feet, the height of which can be varied to ensure that the decking is level.
6. The leading case on what is "a building" is that of *Skerrits of Nottingham Limited v Secretary of State for the Environment, Transport and the Regions* [2000] EWCA Civ 5569, where the Court of Appeal upheld a previous judicial finding that in deciding whether a structure amounts to a building, a threefold test is involved - size, permanence and degree of physical attachment.
7. In terms of size, I consider that the decking has to be looked at as a whole. Each section is modest in size and is made off-site. However, the 13 sections are custom made, varying in height, to be laid together on site in a pre-defined manner to create a level uniform surface. Even though the sections are not physically attached to one another, they each abut neighbouring sections in a planned arrangement, with different sized sections, on adjusted feet, to cater for the specific levels of the roof surface. Whilst the height of the decking is modest, its area is substantial. I therefore consider that its size is sufficient to be considered as a building.
8. In terms of permanence, I was shown on the site visit that the sections could be lifted out of place. However, there is nothing to show that the decking is anything other than a permanent arrangement. There is nowhere else on the property that the sections could be sited, and the care that has been taken to ensure that the sections fit the form of that particular roof make it unlikely that they would be removed once in place, other than for maintenance or cleaning, and then it would be likely that only one section at a time would be removed. At the visit I asked that one of the sections be lifted; whilst it came up easily, many of the plastic feet fell off. As these are precisely fitted to sit under the subframe, and adjusted for level, I consider it unlikely that the sections would be removed once in place unless absolutely necessary.
9. I have no information on the weight of the sections, but I lifted the end of one of the larger sections on my visit and felt its weight. In my judgement, the largest sections are heavy and would require two people to be able to manoeuvre them safely, especially if they were to be lowered or raised to lower levels, or to be lowered carefully so as to keep the plastic feet in place. The decking was erected in March 2018; there is no evidence that (other than a few individual sections) it has been removed in that time. I therefore consider that the decking is likely to be present for a sufficient length of time to be of significance in the planning context.

10. The decking sections are not attached to the roof through any form of affixation. They are held there by their own weight, which in respect of the larger sections is considerable. Outer sections cannot be moved laterally because of the weight of the inner sections against which they abut. I therefore consider that there is a degree of attachment of the decking to the roof by virtue of the weight and arrangement of the decking. Notwithstanding this, the Courts have held that an absence of physical attachment is not in itself decisive.

Thus, I conclude that, as a matter of fact and degree, the decking, due to its substantial size, its permanent character and the secure nature of its attachment to the roof, is a structure which is to be regarded as a building for planning purposes. Consequently, the erection of the decking amounts to the carrying out of a building or other operation, which constitutes 'development' as defined in section 55(1) of the 1990 Act. The Council has not granted planning permission for the decking and the appellant does not suggest that it was permitted by any class of the Town and Country Planning (General Permitted Development) (England) Order 2015. Accordingly, I conclude that there has been a breach of planning control and the appeal on ground (c) fails

Other matters

11. The appellant has referred me to other rooftop structures nearby, which I saw on my visit. However, their presence has no bearing on the sole issue before me, which is a narrow one, confined only to the question of whether there has been a breach of planning control.

Conclusion

12. For the reasons given above, I conclude that the appeal should be dismissed and the enforcement notice be upheld.

JP Roberts

INSPECTOR