



Appeal Decision

Site visit made on 30 July 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 09 September 2019

Appeal Ref: APP/J1535/C/18/3209942

Land at 240 High Road, Loughton IGO 1HA

- 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 by Antonio Motisi against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice, ref. ENF/0523/17, was issued on 27 July 2018.
 - The breach of planning control alleged in the notice is the erection of enclosure to shop front which is not in accordance with approved plans under planning permission ref. EPF/1150/17 shown in the approximate position hatched black on the plan attached to the notice.
 - The requirements of the notice are to:
 - EITHER:
 - i) Remove the unauthorised decking and enclosure from the front of the premises on the Land
 - ii) Remove all resultant debris from the Land following compliance with step (i) above.
 - OR
 - iii) Install the decking and enclosure in accordance with that approved under planning permission reference EPF/1150/17.
 - iv) Remove any resultant debris from the Land following compliance with step (iii) above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) 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 do not fall to be considered.
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Decision

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

Background matters

2. The appeal property, which is in use as a restaurant/hot-food takeaway, stands within a parade of commercial/retail premises on the north-western side of High Road. In 2017 planning permission was granted for installation of a new shop-front and external seating area¹. The enforcement notice relates to the external seating area, which the Council say does not accord with the approved scheme.

¹ Decision notice ref. EPF/1150/17, dated 4 July 2017.

The appeal on ground (f)

3. This ground is that the requirements of the enforcement notice are excessive and that lesser steps would overcome the Council's objections. The appellant argues that works have been carried out which result in the decking and enclosure appearing substantially the same as the approved design, albeit on a slightly smaller footprint. It is claimed this was as suggested by one of the Council's planning officers at a meeting in December 2017. However, no documentary evidence has been put forward to support this.
4. I take the appellant's argument to mean that he has effectively complied with the second alternative of the notice requirements. That is, he has - to all intents and purposes - installed the decking and enclosure in accordance with that approved under the planning permission.
5. The Council acknowledge that the structure projects less far from the front of the building than the approved scheme would have done. However, they also say that the height and width of the enclosure exceed the dimensions of the approved scheme. This has not been disputed by the appellant. I noted on my visit that there are other differences between the as-built and approved schemes, such as the introduction of galvanised steel guard rails, and the raised platform for the seating areas.
6. In my opinion the scheme carried out remains significantly different from the approved scheme, and it cannot be said that this is some lesser version that might overcome the Council's objections, which relate to impact upon the street scene as a result of the bulk, poor design, and excessive height and width of the structure. I do not consider lesser steps have been demonstrated, and the appeal on ground (f) must therefore fail.

Conclusions

7. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Stephen Brown

INSPECTOR