The Planning Inspectorate

# Appeal Decision

Site visit made on 9 September 2019

**by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 October 2019**

**Appeal Ref: APP/B5480/C/18/3214311**
**76-78 North Street, Romford RM1 1HD**

- 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 Mrs Ann Burjack against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 14 September 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection and storage of a container to the rear of the land.
- The requirements of the notice are: -
  i) Remove the storage container from the land.
  ii) Remove al materials and debris resulting from step (i) from the site.
- 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 (the 1990 Act). 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 1990 Act have lapsed.

**Summary of Decision: The appeal is dismissed and the enforcement notice, subject to corrections, is upheld as set out in the Formal Decision below.**

## The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.

2. The description of the alleged breach at paragraph 3 relates to the erection and storage of a container. As such, it is not clear whether the alleged breach relates to operational development and/or a material change of use. Nevertheless, the Council have confirmed that it considers the alleged breach relates to operational development. In my view, no party would be caused any injustice or prejudice by the correction of the allegation to one solely of operational development as their representations would not change. I will therefore correct the notice by deleting the words *'and storage'* from paragraph 3.

3. The appellant has stated that the description of the alleged breach is not correct as the storage container is not on the land at the rear as it is on the flat roof at the rear on the building. I consider that to ensure that there is clarity

that the words *'to the rear of the land'* are deleted and replaced *with 'on the flat roof of the single storey rear extension'*. As this is a minor matter I do not consider that this correction would cause any injustice.

**Procedural Matters**

4. The appeal was originally made on ground (b) only but, subsequent to the appeal being submitted, the appellant confirmed that she had made a mistake and had meant to appeal on ground (c). Furthermore, evidence submitted on behalf of the appellant refers to the impact of the development on the living conditions of nearby residents and the character and appearance of the area. However, as there is no appeal on ground (a) and no deemed planning application for me to consider, the planning merits of the development are not relevant to my decision.

5. There is also reference, within that evidence, as to whether the steps required by the notice to be taken are excessive. I have taken this to be an implied appeal on ground (f) and the Council have had the chance to comment on this.

**The ground (c) appeal**

6. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof is on the appellant. For example, the appellant needs to demonstrate that development has not occurred for the purposes of Section 55 of the 1990 Act, or that the matters alleged in the notice have been granted planning permission, or that they constitute 'permitted' development.

7. There is no permission in place and I now turn to whether or not permission is required. Having noted the size of the container and its position I consider that it can be classed as a building under section 336(1) of the 1990 Act. This sets out a wide definition for what constitutes a building and includes 'any erection or structure'. The courts have held that structures which might not ordinarily be described as 'buildings' can be included in the definition. These include marquees, polytunnels and other similar structures.

8. The container does not appear to be affixed to the part of the building that it sits on and has been placed on wooden blocks to 'level' it and it does not appear to be connected to any services. However, it is of considerable weight and size and has been in position for some time. The appellant has stated that the container is used to store items such as tables and chairs in connection with the use of 76 -78 North Street and I observed that it was being used for those purposes at the time of my site visit.

9. Given its location of top of the flat roof at the rear of the property it would clearly have been necessary to have used special equipment to bring the container to site and to unload it. Further 'building' operations were then required to level the container and it is clearly held down by its own weight irrespective of what might be stored inside. As a matter of fact and degree I consider that the container can be classified as a 'building' and that building operations were required to place it in position. Overall, therefore I consider that these actions amount to operational development for which planning permission would have been required.

10. The appellant considers that under Article 3, Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order

2015 (GPDO) the container is permitted development. This section of the GPDO relates to the temporary placing of such structures (moveable or otherwise) for the duration of operations being, or to be carried out, on the land. In this case the container is in effect being used as a permanent 'building' as an extension to 76-78 North Street and not as a temporary store, for example, whilst the property is altered or refurbished. As such, I do not accept the contention that this particular container, as a matter of fact and degree, satisfies the definition of Class A of Part 4 of the GPDO.

11. I conclude, therefore, that planning permission is required for the operational development as carried out; that there is no express permission in place and that the development is not permitted under any part of the GPDO. The appeal must fail, therefore, on ground (c).

**Implied ground (f) appeal**

12. The requirements are to remove the container and to clear away materials resulting from the removal of the container. The onus is on an appellant to suggest what lesser steps would be appropriate. Whilst I have sympathy with the appellant that the removal of the storage container would attract a cost and may have an impact on her business no specific lesser steps have been put forward in this instance.

13. In my view, on the basis of the reasons given in the enforcement notice, the purpose of the notice is simply to remedy the breach of planning control that has occurred. There are no lesser steps other than removing the container and clearing away materials from the site that would suffice in this particular case.

14. I therefore find that the requirements of the Notice would not exceed what is necessary to remedy the breach of planning control that has occurred. The appeal on ground (f) fails.

**Formal Decision**

15. It is hereby directed that the enforcement notice is corrected by:

    a) deleting the words *'and storage'* from paragraph 3;

    b) the words *'to the rear of the land'* are deleted and replaced with *'on the flat roof of the single storey rear extension'*.

16. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

*D. Boffin*

INSPECTOR