

Appeal Decision

Site visit made on 19 December 2019

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 6th January 2020

Appeal Ref: APP/N5090/C/19/3224532
22 Second Avenue, London NW4 2RN

- The appeal is made by Dayna Sanchez under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: ENF/1479/18) issued by the Council of the London Borough of Barnet on 7 February 2019.
 - The breach of planning control alleged in the notice is "the infilling of a pre existing canopy with plywood panels, plastic sheeting and trellising".
 - The requirements of the notice are as follows: -
 - "1 Restore the land to the state in which it was prior to the breach by removing all plywood panels, plastic sheeting and trellising from the two sides of the infilled canopy.
 - 2 Permanently remove all constituent materials resulting from the works in 1. above from the property"
 - The period for compliance with these requirements is two months.
 - The appeal is proceeding on the ground set out in section 174(2)(c).
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Decision

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

Reasons for the decision

2. The appeal has been brought on ground (c) only, namely that the matters stated in the enforcement notice do not constitute a breach of planning control. The Council maintain that they do, because they consider them to be building operations that have been carried out without planning permission. There is no planning application before me and I am therefore unable to consider the planning merits of these matters if the appeal on ground (c) does not succeed.
 3. The Town and Country Planning Act 1990 states that planning permission is required to carry out building operations on or over land. The term "building operations" includes "structural alterations of or additions to buildings" and "other operations normally undertaken by a person carrying on business as a builder", but excludes improvements or alterations that do not materially affect the external appearance of the building. A building is defined as including "any structure or erection and any part of a building".
 4. Planning permission has been granted by the permitted development order for many building operations carried out at dwellinghouses. However, these rights are not enjoyed at the appellant's home because it is a flat, and flats are excluded by the order from the definition of a dwellinghouse for this purpose.
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5. The notice does not relate to the canopy itself or its supporting structure or to the side panels that are opposite the wall of the flat. I understand that no enforcement action can be taken against these matters because of the passage of time.
6. The "plywood panels, plastic sheeting and trellising" referred to in the notice are at each of the other two sides of the canopy. They consist of translucent plastic sheets with trellising attached with, above them, triangular plywood panels that fill the spaces between them and the sloping roof of the canopy.
7. For the purposes of the legislation described in paragraph 3 above, the canopy is a building, since it is a structure or erection. The main issues in the appeal are accordingly (i) whether the plywood panels, plastic sheeting and trellising comprise structural alterations of or additions to the canopy and (ii), if so, whether they fall within the exclusion applying to improvements or alterations that do not materially affect the external appearance of the canopy.
8. As to the first of these issues, caselaw indicates that three primary factors are decisive. They are whether the size of the works is such that normally they would have to be fabricated on site rather than be brought to the site ready-made, the degree to which the works are permanent and the extent to which the works are physically attached to the ground or the canopy.
9. The works in total are quite sizeable. It seems to me that they would have had to be made to measure on site in order to carry out their installation. This would not have required the expertise of a builder, since it could have been done by anyone with basic DIY skills, using materials that are readily available. The plastic sheets and trellising rest on the ground and the triangular plywood panels rest above them. They can all be taken down in a very short time and without difficulty, since they are lightweight and are held in place by simple catches. These catches secure them to the framework of the canopy. The appellant has explained that the works make the space under the canopy more useful in bad weather conditions, protect plants from cold and frost and improve privacy, but that they are removed at other times in order to enjoy the space under the canopy as outside space.
10. None of these factors is decisive on its own, but it seems to me that on the whole the works, as a matter of fact and degree, do amount to structural additions to the canopy. I have come to this conclusion because of their size, the extent to which they are secured to the canopy and the fact that they serve purposes that will require them to be in place for substantial periods at a time.
11. As to the second issue identified in paragraph 7 above, I do not consider that these works are improvements or alterations that fall within the exclusion. This is because they are visible from other premises and affect the appearance of the canopy as a whole.
12. I have concluded that planning permission is required for the plywood panels, plastic sheeting and trellising. The appeal has therefore failed and the notice has been upheld.

D.A.Hainsworth

INSPECTOR