



Appeal Decision

Site visit made on 2 February 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2020

Appeal Ref: APP/A5840/C/19/3236126

Budgens Mini Supermarket, 127 and 129 Half Moon Lane, London SE24 9JY

- 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 Ketan Patel of Shivam Capital Ltd against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice was issued on 24 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the carrying out of unauthorised development by the installation of four refrigeration/air conditioning units on the side flank wall of the Property, fronting Howletts Road.
 - The requirements of the notice are remove the four refrigeration/air conditioning units from the side flank wall of the Property.
 - The period for compliance with the requirements is within six months from the date this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)[f] of the Town and Country Planning Act 1990 as amended.
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Decision

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

Procedural Matter

2. I carried out my site visit on 2 February 2020, which was a Sunday. Given the details of the case and the grounds of appeal, I do not consider that anyone would be prejudiced by this.
3. During my site visit, in addition to the four air conditioning units on the side flank wall of the property I saw a refrigeration/air conditioning unit on the rear elevation. However, the Council advise within its officer report that it is not connected to the shop unit and therefore is not part of the (Council's) assessment. It is clear from the evidence before me that this does not form part of the breach and so I have not considered it further.

The appeal under ground (f)

4. Section 173 of the Town and Country Planning Act 1990 (as amended) states that (3) an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes. (4) Those purposes are – (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.

5. Section 174 (2)(f) of the Town and Country Planning Act 1990 (as amended) allows for an appeal on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
6. Since the requirements of the enforcement notice are to remove the four refrigeration/air conditioning units from the side flank wall of the Property, the purpose of the notice is clearly to remedy the breach. The appellant asserts that there was already one air con unit at the site. However, there is no suggestion that it was there four years prior to the issuing of the enforcement notice and so I cannot be sure that it would itself have been lawful.
7. The appellant states that he does not have any suitable alternative space to move all the four units and that he has identified an area near the Bin Storage where he can relocate two of the air con units. The appellant suggests the visual amenity can be improved by moving the top 2 units to a storage area behind the shop where they cannot be seen and that a planning application has been submitted in this regard. However, the appellant has not appealed under ground (a) and so I cannot consider the planning merits of such an approach.
8. Since the purpose of the enforcement notice is to remedy the breach, the removal of the four refrigeration/air conditioning units is not excessive. Thus, for the reasons given above I consider that the appeal should not succeed.

M Savage

INSPECTOR