



Appeal Decisions

Site visit made on 11 August 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 20 August 2020

Appeal A Ref: APP/K5600/C/20/3246092

Appeal B Ref: APP/K5600/C/20/3246093

274 Latimer Road, London W10 6QW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Dimitri Kotsakis against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea. Appeal B is made by Mrs Margareth Mitchell.
- The enforcement notice was issued on 22 January 2020.
- The breach of planning control as alleged in the notice is without planning permission, the installation of an entrance porch and a smoking shelter.
- The requirements of the notice are:
 - i. Demolish the entrance porch and remove from the land;
 - ii. Demolish the smoking shelter, consisting of three sides made up of a wooden frame and attached retractable transparent plastic screens, and remove from the land.
 - iii. Remove from the land all resulting debris.
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2)(c) and (d) of the 1990 Act as amended.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

1. In this type of appeal, the onus of proof is firmly upon the appellants. The Courts have held that the relevant test of the evidence on matters such as 'legal' grounds of appeal is the balance of probabilities. The appellants' own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellants' version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
2. The appellants set out, at some length, the reasons why they consider the development would not have an adverse effect on the character and appearance of the surrounding area. This includes the scale and design of the porch, the presence of industrial units in the vicinity, that the alleged development is necessary for noise abatement and/or safety purposes, the change of use of the neighboring property to residential and whether it complies with Building Regulations and the viability of the appeal premises.

3. There is also information relating to other development in the area, which the appellants consider to be out-of-character with the surroundings. I have noted the support for the venue on a community website and a letter of support from a local MP.
4. These arguments relate to the planning merits of the alleged development. However, there is no ground (a) appeal and related deemed planning application. Consequently, the planning merits are not before me and cannot be considered.
5. I have noted the submissions concerning the premises licensing, which amounts to a procedural complaint against the Council. This matter is not relevant to these appeals.

The appeals on ground (c)

6. The appeals on ground (c) are that the matters alleged do not constitute a breach of planning control.
7. Under section 57(1) of the 1990 Act as amended, *planning permission is required for the carrying out of any development of land*. Section 55(1) says that "*development, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land*". For the purposes of the Act, "*building operations includes structural alterations of or additions to buildings*".
8. According to the appellants' plan, the porch measures 1.5 metres squared. I saw that it is a solid construction with a flat roof and side windows. I consider it to be an addition to the building, which constitutes development for the purposes of s55(1). The smoking shelter is constructed from a timber frame with retractable screens and it encloses a relatively large area of the forecourt. It is also solidly built. I find that the structure comprises an addition to the building, which constitutes development.
9. The appellants argue that the structures are temporary, however, it is apparent from their construction that they remain in situ and are not assembled and removed as required. Moreover, this claim contradicts the ground (d) appeals, which concern the length of time the alleged development has been erected.
10. The alleged matters constitute development for which planning permission would be required. There is no evidence before me to show that planning permission has been granted for the development alleged. Nor is there any argument that the development would benefit from that 'permitted' under Article 3 and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
11. I conclude that the appellants have not shown on the balance of probability that the matters alleged do not constitute a breach of planning control and the appeals on ground (c) must fail.

The appeals on ground (d)

12. The ground (d) appeals are made on the basis that, at the date when the notice was issued, no enforcement action could be taken.
13. Section 171B(1) of the 1990 Act as amended provides that - where there has been a breach of planning control consisting in the carrying out without

planning permission of building operations...."*no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed*". In this case, the relevant date is 22 January 2016.

14. The appellants indicate that the porch was taken down and reassembled "three years ago" but then go on to claim that it was completed at the end of August 2015 or sometime in 2014. The evidence in relation to this matter is ambiguous. It is not consistent with a finding that the existing structure was substantially completed four or more years prior to the issue of the notice.
15. The appellants explain that the smoking shelter was erected in 2004 and altered six years prior to the date of the appeal. However, there is limited evidence to support this assertion. As set out above, the onus is on the appellant in this type of appeal. Moreover, the Council has submitted evidence of its own which contradicts the appellants' arguments. The 'street view' images supplied indicate the development was not in place in March 2017. The appellants cast doubt on the Council's images but they are screenshots taken from a 'google' website with the dates embedded. In contrast, the appellants' image is a photograph with a date printed onto it. Again, the appellants' evidence is ambiguous and does not show, on the balance of probability, that the matters alleged were substantially completed on or before 22 January 2016.
16. Therefore, the appeals on ground (d) must fail.

Conclusions

17. For the reasons given above I consider that the appeals should not succeed.

Formal Decisions

18. The appeals are dismissed and the enforcement notice is upheld.

Debbie Moore

Inspector