The Planning Inspectorate

Appeal Decision

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 November 2020

Appeal Ref: APP/A2280/C/19/3233043
106 Church Street, Cliffe, Rochester, Kent ME3 7PT

- 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 J Sathi against an enforcement notice issued by The Medway Council.
- The enforcement notice was issued on 18 June 2019.
- The breach of planning control as alleged in the notice is: Without the benefit of planning permission the installation of two air conditioning units at first floor level to the rear of the Property.
- The requirements of the notice are: Remove the two air conditioning units, including any associated pipework, fixings, debris and associated materials from the Property.
- The period for compliance with the requirements is one calendar month.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) 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 have lapsed.

Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a variation.

Application for costs

2. An application for costs was made by Mr J Sathi against The Medway Council. This application is the subject of a separate Decision.

Preliminary Matter

3. A Hearing had been requested by the appellant on the basis that a discussion may assist in the clarification of facts. However, the appeal development concerns two air conditioning units and the grounds of appeal can be clearly understood. The issues are therefore not complex and the requirements of the enforcement notice are clear. Moreover, as no ground (a) appeal has been pleaded and photographic evidence has been provided, a site visit would not assist in the determination of this appeal. I do not consider that injustice would result from proceeding with the appeal on the basis of the written evidence already submitted, for the aforementioned reasons.

The ground (b) appeal

4. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the installation of two air conditioning units at first floor level to the rear of the property, had not occurred as a matter of fact at the time the enforcement notice was issued.

5. Evidence in the form of photographs have been provided which demonstrate on the balance of probabilities that the two air conditioning units have been installed at first floor level to the rear of the property. The allegation has therefore been correctly framed, and that the appellant considers the units to be otherwise lawful is not a matter for a ground (b) appeal, and so is a matter I shall subsequently consider under the ground (d) appeal.

6. The appeal on ground (b) therefore fails.

The ground (c) appeal

7. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.

8. It is not in dispute between the parties that there were two air conditioning units on a flat roof at the rear of the property; indeed, the Council has provided photographic evidence to this effect. These have since been replaced by the units attacked by the enforcement notice, which have been installed on a rear first floor wall. Photographs of these units are also before me.

9. These units are in a materially different position to those previously situated on the roof; despite being intended by the appellant as a replacement for these. The units, based on the photographic evidence before me, also materially affect the external appearance of the building, at the rear, where they have been installed. It therefore follows that owing to their positioning, size and material affect on the external appearance of the building, the units are development for the purposes of s55 of the Act.

10. I however have very little evidence before to demonstrate on the balance of probabilities why the units would be permitted development or that a planning permission has been granted for them, despite planning permission having been said to have been granted for other works at the site.

11. The appellant has therefore not demonstrated on the balance of probabilities that there has not been a breach of planning control and so the appeal on ground (c) fails.

The ground (d) appeal

12. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. The latest date for the substantial completion of the installation of the two air conditioning units at first floor level to the rear of the property would thus need to be by 18 June 2015.

13. The appellant asserts that the units were installed in January 2014. The evidence underpinning this is said to be confirmed by an enclosed invoice from The Jordan Group of Oldham, dated 31 January 2014. There are then subsequent service reports for equipment at the site.

14. There is however no first-hand evidence, for example a statutory declaration, before me. The invoice itself does not demonstrate on the balance of probabilities the installation of the said air conditioning units in January 2014. It is vague and ambiguous as I have no means of identifying the units on the invoice, either by means of any description relating to such units or the appellant highlighting which items on the invoice are the said units. Indeed, the only item on the invoice for which there were two in quantity relates to a manual night blind, and the remainder would appear to relate chilled display cabinets (a dairy case/s), as opposed air conditioning units. The subsequent service records then appear to relate to the same.

15. Even if the invoice did relate to air conditioning units, it does not in itself demonstrate on the balance of probabilities that it then relates to the units that are attacked by the enforcement notice, as opposed direct or other replacements, on the roof, for those that are known to have previously existed. The absence of such evidence directly pertaining to the units before me therefore casts further doubt in my mind as to when the units were installed and thus the appellants version of events.

16. The appellant has therefore not discharged the necessary burden of proof to demonstrate on the balance of probabilities that the substantial completion of the installation of the two air conditioning units at first floor level to the rear of the property had taken place by 18 June 2015.

17. The appeal on ground (d) therefore fails.

The ground (f) appeal

18. The purpose of the enforcement notice is to remedy the breach of planning control as it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives.

19. The requirements of the notice remedy the breach of planning control and no lesser alternatives have been put before me by the appellant. That the period for compliance is too short, is a matter for the ground (g) appeal which I shall next consider.

20. The appeal on ground (f) therefore fails.

The ground (g) appeal

21. The appellant contends that the period for compliance is too short and that in order to find a solution with the Council a period of six months should not be considered unrealistic. However, in order to strike an appropriate balance in terms of the business need for refrigeration, but not to unduly perpetuate the breach of planning control, a period of 4 months would be adequate and reasonable to enable the appellant to consider alternatives and remove the developments the subject of the enforcement notice.

22. To this extent the appeal on ground (g) succeeds.

Overall Conclusion

23. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Formal Decision

24. It is directed that the enforcement notice be varied by:

- substituting 4 calendar months as the period for compliance.

25. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR