



Appeal Decision

Site visit made on 3 March 2021

by **P N Jarratt BA DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 March 2021

Appeal Ref: APP/W3330/C/20/3260776

Cafe Bar 21, 21 The Avenue, Minehead, TA24 5AY

- 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 W Wynn against an enforcement notice issued by Somerset West and Taunton Council.
 - The enforcement notice, numbered ECC/EN/18/00058, was issued on 21 August 2020.
 - The breach of planning control as alleged in the notice is
 - a) the construction of a rear extension in the position as shown edged green on the plan annexed to the notice;
 - b) the construction of a timber toilet block in the position as shown edged purple on the plan;
 - c) the erection of a 2.75 metre high timber fence and gates in the position as shown edged light blue on the plan;
 - d) the erection of a timber pergola in the position as shown edged yellow on the plan;
 - e) the construction of an area of raised decking with a fence and a glazed panel in the position as shown edged dark blue on the plan;
 - f) the installation of timber cladding at first floor level on the south and east elevations of the building.
 - The requirements of the notice are:
 - a) demolish the extension to the rear of the building and remove from the land all materials resulting from such demolition;
 - b) demolish the timber toilet block and remove from the land or materials resulting from such demolition;
 - c) remove from the land the 2.75 metre high timber fencing with gates;
 - d) demolish the timber pergola and remove from the land all materials resulting from such demolition;
 - e) take up the raised decking area with associated fencing and glazed screen panel and remove all resulting materials from the land;
 - f) remove the timber cladding from the building and remove all resulting materials from the land.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2), (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:** allegation corrected, appeal dismissed and notice upheld following variation.
-

Procedural Matters

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

2. The appellant has appealed on ground (b) that the matters alleged in respect of allegation 3(f) relating to timber cladding on the first floor level on the south and east elevations of the building have not taken place. However, this is a matter for consideration on ground (c), which is how I have considered it below.
3. Where a case relies on legal grounds, the onus of proof rests with the appellant and the level of proof is on the balance of probability.

The appeal site and relevant planning history

4. The appeal property is a semi-detached building located on the commercial frontage of The Avenue within the Wellington Square Conservation Area. The ground floor and the open areas to the front, side and rear are used in connection with the café/bar. The outside area contains the various structures the subject of the allegation.
5. Permission was granted for a change of use from A1 retail sales to A3 restaurant/café in July 2013 (3/21/13/050) and for the display of non-illuminated signage in May 2014 (3/21/14/035).
6. In March 2020 permission was refused for the retention of a rear toilet block, 2.75 high timber fencing with gates, 2 portable timber carts and a timber pergola (3/21/18/080).

The appeal on ground (c)

7. An appeal on this ground is that there has not been a breach of planning control. The appellant states that allegation 3(f) relating to timber cladding on the first floor level on the south and east of the building was installed as part of advertisement consent 3/21/14/035 and he believed that the cladding formed part of that consent. It is pointed out that although condition 4 of the consent required the removal of the adverts within 5 years, this was not followed up by the Council who would have been able to deal with the matter under the Advertisement Regulations.
8. The display of advertisements is controlled through a specific approval process and separate planning permission is not required in addition to advertisement consent. Advertisement consent grants permission for the structure, but if the structure and/or the advertisement is different to that approved, other than changes that can be regarded as *de minimis*, then no consent exists. In this case, the Council advises that the timber cladding is different to that approved in the 2014 application in that it is higher obscuring the lower part of the first floor windows and also that the signage is different. From my observations when I visited the site, the assessment of the Council appears correct.
9. Accordingly, a breach of planning control has occurred as no permission exists for the timber cladding and the appeal on this ground therefore fails.

The appeal on ground (d)

10. An appeal on this ground is that it is too late for enforcement action to be taken. The appellant states that the gates and fencing subject to allegation 3(c) were substantially completed in August 2016 and are therefore immune from enforcement action through the passage of time.

11. The appellant has submitted a declaration, which takes the form of an unsworn statutory declaration which has not been witnessed because of the difficulty in gaining access to a Solicitor during the current Covid restrictions. The appellant states in the declaration that the 2.75m high timber fence and gates were substantially completed by his contractor Mr Andrew Hall prior to August 2016. Mr Hall has provided a letter dated 2 October 2020 to this effect.
12. The appellant has submitted an October 2016 Google street view photograph of the premises. This shows the front and side of the appeal site with some fencing shown and the timber cladding on the south elevation. The detail and extent of the fence is unclear and its height cannot be ascertained. The photograph also post-dates 21 August 2016 which is 4 years prior to the issue of the notice. Other than the appellant's declaration and Mr Hall's letter, no further evidence has been submitted to support the date when the works were executed such as invoices and receipts, which would normally be expected. However, notwithstanding this, and having regard to the Gabbitas case¹ I attach sufficient weight to the appellant's declaration to accept that, on the balance of probability, the fence and gates were erected before August 2016 and are immune from enforcement action by virtue of s191.
13. The appellant also claims that the timber cladding on the south elevation has been in place for over 4 years prior to the date of the notice. This is shown on the October 2016 Google street view photograph as extending across the front (south) elevation of the appeal property but stops short of the corner of the building and is absent from the east elevation. It cannot therefore be considered as being substantially completed and immune from enforcement action through the passage of time.
14. The appeal on this ground succeeds so far as allegation 3 (c) is concerned but fails in respect of allegation 3(f).

The appeal on ground (f)

15. In view of my conclusion on the ground (d) appeal, it is only necessary for me to consider the appeal under ground (f) so far as it relates to requirement 3(f).
16. The appellant considers that the step to remove all the cladding is excessive on the basis that the cladding on the front (south) elevation is immune from enforcement action. However, as I have found above, the cladding was not substantially completed 4 years prior to the notice it is not immune.
17. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.
18. The appeal on this ground fails.

The appeal on ground (g)

19. An appeal on this ground is that the time for compliance is too short and that a period of 2 years would be appropriate and proportionate due to Covid

¹ FW Gabbitas v SSE and Newham BC [1985] JPL 630

restrictions. However, against this it is necessary to consider the continuing harm that the unauthorised development has on the street scene and Conservation Area and that this harm should be mitigated as soon as possible.

20. It is accepted that the hospitality sector has been severely affected as a result of enforced closure. Notwithstanding this, and in view of the difficult trading situation that has arisen, I believe that a period of 12 months would be a reasonable compliance period.

21. To this extent, the appeal on this ground succeeds.

Conclusions

22. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction and variations.

Decision

23. It is directed that the enforcement notice be corrected by the deletion of allegation (c) relating to the erection of the fence and gates;

and varied by:

- i) the deletion of requirement (c) relating to the fencing and gates; and
- ii) the deletion of 9 months for the period for compliance and its replacement with a 12 month compliance period.

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

P N Jarratt

Inspector