The Planning Inspectorate

Appeal Decision

Site visit made on 2 June 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 29 June 2021

Appeal Ref: APP/A5270/C/20/3260412
8 Wadsworth Road, Perivale, Middlesex UB6 7JD

- 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 Ali Kitham Judy of Delta Designs Limited against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 6 August 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the construction of a front canopy extension.
- The requirements of the notice are
  1.Remove the unauthorised front canopy extension in its entirety; and
  2.Remove all resultant debris
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Decision

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

Application for costs

2. An application for costs was made by the London Borough of Ealing against Ali Kitham Judy of Delta Designs Limited. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal is made under ground (c) only. There is no appeal before me on ground (a) which would have considered whether planning permission should be granted for the development. The planning merits of the development are therefore outside the remit of this appeal.

The appeal under ground (c)

4. An appeal under ground (c) is that there has not been a breach of planning control and the onus is on the appellant to make out the case that there has not been a breach. The development consists of a front canopy extension attached to a building which is currently used by a car tyre business. The appellant considers that the development is a flimsy, temporary structure which in an industrial location benefits from permitted development rights.

5. A breach of planning control comprises the carrying out of development without the required planning permission. Section 57 of the Town and Country Planning

Act 1990 (the Act) sets out that planning permission is required for development. The definition of development as set out in Section 55 of the Act includes " the carrying out of building, engineering, mining, or other operations in, on over or under land…" Section 336(1) of the Act sets out a list of definitions for the purposes of the Act. A "building" includes any structure or erection and is therefore wider than a dictionary definition of a building.

6. The canopy extension is made up of a frame attached to the front of the building with plastic roof sheeting with posts supporting the frame to the front and to one side. Whilst, the appellant refers to the canopy as a structure and not a building, a "building" for these purposes includes a structure. As a "building" it falls within the definition of development which without the benefit of planning permission constitutes a breach of planning control. It is not disputed that the canopy does not have express planning permission.

7. Permitted development refers to categories of development which are set out in the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO) and which do not need express planning permission. The appellant states he was not aware that planning permission was required for a temporary canopy extension given the industrial location. As the canopy has however been in place since January 2020 and some of the supporting posts are set in concrete, it is not clear in what sense the structure is temporary.

8. The Council has taken the appellant's reference to the canopy being permitted development in an industrial context of the appeal site to relate to Schedule 2, Part 7 Class H.1 (e) of the GPDO which includes extensions to industrial buildings. However, development is not permitted by Class H.1 (e) if "any part of the development would be within 5 metres of any boundary of the curtilage of the premises." As the canopy extension is to the front of the existing unit and is within 5 metres of the front boundary of the appeal site, it does not fall within Schedule 2, Part 7, Class H of the GPDO.

9. As there is no evidence before me to show that the canopy extension has permitted development rights and it does not have express planning permission, a breach of planning control has occurred. The ground (c) appeal therefore fails.

Other Matters

10. The appellant has referred to a number of matters in his evidence which fall outside the scope of this appeal which is limited to whether or not a breach of planning control has occurred. The presence of other developments with photographs provided which may or may not have planning permission is not a matter for consideration within the limited remit of this appeal under ground (c).

11. Similarly, any alleged environmental benefits, workers' benefits, policy arguments, the planning history of the unit and the wider area, along with any other matters raised that do not relate to whether a breach of planning control has taken place are not matters for my consideration given the limited remit of this appeal.

12. The appellant states that the Council should have had dialogue with him before serving the notice. The Council has provided a copy of the warning letter sent to the owner before the notice was served and indicated that no response was

received from the owner or occupier prior to the service of the notice. In any event, I have found that a breach of planning control has occurred which is required to be remedied.

Conclusion

13. For the reasons given, I conclude that the appeal should not succeed and the enforcement notice should be upheld.

E Griffin

INSPECTOR