



Appeal Decision

Site visit made on 15 June 2021

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2021

Appeal Ref: APP/J1915/C/21/3270454

Malton's (Formerly The Sow and Pigs), Cambridge Road, Thundridge, Ware SG12 0ST

- 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 Faizollah Shafiy against an enforcement notice issued by East Hertfordshire District Council.
- The enforcement notice was issued on 8 February 2021.
- The breach of planning control as alleged in the notice is:
 1. *The structure to the rear of the main restaurant building referred to as a 'free standing smoking shelter' was originally a 'skeletal structure' detached from the main restaurant building. This has now been enclosed with a vinyl awning and fitted with additional external roofing, doors and rainwater goods contrary to the conditional planning permission granted 28.01.08. The structure's intended use is that of an events space and has planning permission only to be used as a 'smoking shelter'.*
 2. *The roof extending from the rear of the main restaurant building has been additionally extended and joined onto the 'smoking shelter' structure, covering all of the rear patio area, contrary to the conditional planning permission granted on 19.12.12.*
 3. *The rear patio area has been entirely enclosed with vinyl awning attached to the unauthorised roof extension.*
- The requirements of the notice are:-
 1. Remove all enclosures, doors and additional roofing from the structure to the rear of the main restaurant building referred to as a 'free standing smoking shelter' shown hatched in red on the attached plan.
 2. Remove the roof extension to the rear of the main restaurant building and the awning enclosing the rear patio/walkway area, both of which are shown hatched in blue on the attached plan.
 3. Remove all from the site all resultant materials following compliance with steps 1 and 2.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended (the 'Act').

Summary decision: The appeal is dismissed and the enforcement notice is upheld with variations and corrections.

Procedural Matters

Grounds of appeal

1. The appellant appealed on grounds (a) and (f). Under section 174(2A) of the Act the appellant has not been permitted to make an enforcement appeal on ground (a). The appeal therefore proceeds on ground (f) only.

2. The appellant has since appealed against non-determination of an application to retain the development. This appeal will be the subject of a separate Decision.

Allegation

3. The allegation includes reasons for the issue of the notice rather than specifying the breach. It is also unnecessary for the allegation to describe in such detail how the development came about. It would benefit from greater clarity and brevity.
4. Development is only a breach of planning control when it is undertaken either without (a) the required planning permission or (b) failure to comply with any condition or limitation subject to which planning permission has been granted, as set out in section 171A(1) of the Act. The notice refers to a breach of condition but the notice is issued under s171A(1)(a) not (b). Whilst the omission of the words 'without planning permission' from the allegation does not make the notice invalid or a nullity, it is good practice to use the phrase for completeness and avoidance of doubt.
5. Furthermore, the notice is clearly directed at operational development rather than a material change of use. Therefore, the structure's intended use, mentioned in the first allegation, is irrelevant and should be struck out.
6. I will use my powers to correct the allegation to address these matters and to make it more succinct.

The Appeal on Ground (f)

7. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. To determine this, it is essential to first understand the purpose of the notice. Section 173(4) of the Act provides that the purpose of the notice shall be either to remedy the breach of planning control or to remedy any injury to amenity.
8. The notice requires the removal of all enclosures, doors and additional roofing from the 'smoking shelter' structure and the removal of the roof extension to the rear of the main restaurant building and the awning enclosing the rear patio/walkway.
9. The purpose of the notice is therefore to remedy the breach of planning control. For an appeal on ground (f) to succeed the appellant must show that the requirements of the notice are excessive to remedy the breach and that 'lesser steps' would achieve the same end.
10. The appellant contends that, in re-purposing the smoking shelter, he has cleaned it and enclosed it, but not changed the roofing material. Hence the removal of the additional roof structure goes beyond any works undertaken by him. He further contends that it is open to him, or the operator of the public house, to maintain the building and that could include the repair or replacement of the roof to the shelter.
11. These are planning issues. In the absence of a ground (a) appeal and no deemed planning application, there is no scope for me to consider such matters under an appeal on ground (f) alone. Furthermore, retaining the alleged development does not remove it and therefore would not remedy the breach. I

find that no lesser steps have been put forward that would remedy the breach. The appeal on ground (f) must fail.

Compliance period

12. Even though there is no ground (g) appeal – that the period specified for compliance with the notice falls short of what is reasonable – I am mindful of the outstanding appeal. This is unlikely to be determined within the 2 month compliance period. Therefore, I consider it appropriate to extend the compliance period by four more months so as not to prejudice that appeal. I shall use my powers under section 176(1)(b) of the Act to vary the notice accordingly. Should it transpire that the other appeal remains undetermined within that six months then the Council has discretion to extend the compliance period further.

Conclusion

13. For the reasons given above I consider that the appeal should not succeed. I am varying and correcting the enforcement notice accordingly, prior to upholding it.

Formal Decision

14. The appeal is dismissed and it is directed that the enforcement notice be corrected and varied as follows:

- Correct the allegation by **inserting** “Without planning permission:-” before the first allegation in section 3 of the notice.
- **Delete** the text of the first allegation and **substitute** with the words: “The installation, fitting and erection of a vinyl awning, additional external roofing, doors and rainwater goods to enclose the smoking shelter contrary to the conditional planning permission granted 28.01.08”.
- **Delete** the text of the second allegation and **substitute** with the words: “The erection of a roof between the rear of the main restaurant building and the smoking shelter structure to cover all of the rear patio area contrary to the conditional planning permission granted 19.12.12”.
- **Delete** the text of the third allegation and **substitute** with the words: “The installation of a vinyl awning attached to the roof extension, to enclose the rear patio area”.
- Vary the time for compliance by **deleting** “2 months” and **substituting** with “6 months”.

15. Subject to these variations and corrections the enforcement notice is upheld.

K. Stephens
INSPECTOR