
Appeal Decision

Site visit made on 17 August 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2021

Appeal Ref: APP/N5090/C/21/3267621

Land at 2 Siamese Mews, London N3 2LD

- 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 Mark Kline (Balladare Limited) against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 15 December 2020.
 - The breach of planning control as alleged in the notice is without planning permission the construction of a wooden structure on the roof of the building.
 - The requirements of the notice are:
 - 1 Demolish the wooden structure, as shown outlined in red on the photograph attached to the enforcement notice from the roof of the building.
 - 2 Permanently remove all constituent materials resulting from the works in 1. above from the property.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

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

The appeal on ground (c)

2. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
3. Whilst it was evident at my site visit that the appellant has, since the notice was issued, complied with the requirements, the appropriate time period for the consideration of a ground (c) appeal is at the time when the notice was issued and when the appeal is determined.
4. By virtue of section 55(1) of the 1990 Act the meaning of 'development' includes the carrying out of building, engineering, mining, or other operations in, on, over or under land and the making of any material change in the use of any buildings or other land. Section 57(1) provides that planning permission is required for development.
5. In this case the Council allege the construction of a wooden structure on the roof of the building, namely operational development, as defined in section 55 of the Act.

6. The appellant's case on this ground is limited, with the appellant stating that the structure was erected *for a period of 28 days or less as indeed defined within the planning guidelines*. They do not seek to establish that the structure does not constitute operational development and other than to state that the structure is a *temporary structure* and to explain why it was not removed sooner, no further evidence was provided to support their claim.
7. However, although it has not been made clear, it appears to me that the appellant is referring to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
8. Article 3 Schedule 2 Part 4 Class B of the GPDO permits the temporary use of any land for not more than 28 days in total in any calendar year subject to conditions and limitations, including that the land in question is not a building or within the curtilage of a building (B.1.(b)).
9. Since in this case the structure constitutes operational development, not a use of land, and is within the curtilage of a building, it would not therefore be permitted by this part of the GPDO.
10. In the absence of substantive evidence, the appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The development is not development that is permitted by any development order and there is no record of planning permission having been granted for it. The appeal on ground (c) therefore fails.

The appeal on ground (g)

11. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant's case is essentially that given the restrictions associated with the pandemic the period is unreasonable. They did not however suggest what they consider a reasonable period to be.
12. The time period given for compliance within the enforcement notice is to allow for the physical works associated with the notice to be removed. The appellant's submission is based on the restrictions associated with the pandemic however, I am conscious that such restrictions have, since the appeal was made, eased.
13. Whilst the structure has already been removed, given the relatively straightforward nature of the construction, I consider the period of one month for the demolition of the structure and removal of materials from the land, as specified in the notice, is proportionate to the breach of planning control that has occurred. The appeal on ground (g) therefore fails.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Felicity Thompson

INSPECTOR