
Appeal Decisions

Site visit made on 9 September 2021

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2021

Appeal A: APP/Z0116/C/21/3276956

Appeal B: APP/Z0116/C/21/3276957

113 Thicket Avenue, Fishponds, Bristol BS16 4EQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Richard Berry and Appeal B is made by Miss Sharon Yearsley against an enforcement notice issued by Bristol City Council.
 - The enforcement notice, numbered DJM/GD04.204, was issued on 18 May 2021.
 - The breach of planning control as alleged in the notice is: *Without the grant of planning permission the erection of two canopy structures to the front of the property.*
 - The requirements of the notice are: *Dismantle and remove from the site the two canopy structures located to the front of the premises known as 113 Thicket Avenue.*
 - The period for compliance with the requirements is four months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The property is an extended end of terrace, 2 storey dwelling set back from the public highway with an area of hardstanding to the front. A hedge defines the boundary with the highway. The property is located on the corner of Thicket Avenue and Briar Way. The development comprises two canopies which project from the building frontage. The smaller canopy is a lean-to constructed of timber and corrugated roofing. It extends forward to the hedge. The larger is dual pitched with gabled frontage constructed of the same materials. It extends to the highway boundary and encompasses the width of the vehicular access to the property.

The appeals on ground (b) and ground (c)¹

3. An appeal on ground (b) is a legal ground of appeal and is a claim that the matters alleged at Section 3 of the enforcement notice have not occurred as a matter of fact. The appeal on ground (c) is a claim that those matters do not constitute a breach of planning control. In pursuing an appeal on these legal grounds, the onus firmly rests with the appellant to show, on the balance of probabilities, that the matters stated in the notice have not in fact occurred and, if they have, do not constitute a breach of planning control.

¹ There is significant overlap between arguments advanced on grounds (b) and (c) therefore I will combine them.

4. Matters relating to the planning merits of the two canopy structures in the context of the street scene or the effect of the development on occupants of neighbouring properties are not relevant to an appeal made on ground (b) or (c). Furthermore, whilst I acknowledge the appellants' reasons for siting the structures, those arguments are more relevant as to whether planning permission should be granted. However, no appeal is made on ground (a) that planning permission should be granted, therefore I cannot take those matters into account in reaching my decision.
5. The term 'building operations' is defined for the purposes of the 1990 Town and Country Planning Act in section 55(1A) as including (a) demolition, (b) rebuilding, (c) structural alterations of or additions to buildings, and (d) other operations normally carried on by a person in business as a builder. The list is not exhaustive. Section 55(1) and (1A) should be read with regard to section 336(1) which defines a 'building' as including any structure or erection and any part of a building, but not plant or machinery comprised within a building.
6. Established case law² identified three primary factors as being relevant to the question of what was a "building". These are: (a) size - a building would normally be something which was constructed on site as opposed to being brought already made to the site; (b) permanence - has the structure been moved? Is it capable of being moved and, if so, how? Is it intended to be moved in practice? How long has it been, or will it be in one position? It should be noted that 'permanence' does not necessarily mean 'forever or indefinitely'; (c) physical attachment - how it is it fixed to the ground? Does it need to be fixed, or will it rest by its own weight? Is it mounted on a permanent base? Is it attached to services? Has the placing of the building resulted in any physical change in the characteristics of the land?
7. The canopies, which are, to all intents and purposes analogous to a car port in design and purpose, are of timber construction, bolted together, with a roof covering and open sides, attached to the front elevation of the house. The structures are of considerable bulk and mass, and it is apparent by their scale that their weight would 'fix' them to the ground. Furthermore, the size and design of the structures suggests that they cannot easily be moved within the site, and there is no evidence to show that has happened. Overall, the canopies are a sizeable structure and display a sufficient degree of permanence, and I consider that the works carried out to construct them fall within s55(1)(A) of the 1990 Act.
8. For the reasons above, I consider that, on the balance of probability, the canopies comprise operational development, as alleged. Consequently, I find that the erection of the canopies is development that requires planning permission, in the absence of which the appeals on grounds (b) and (c) must fail.

S A Hanson

INSPECTOR

² Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1QB 385, endorsed by the Court of Appeal in Skerritts of Nottingham Ltd v SSETR (No.2) [2000] 2 PLR 102