



Appeal Decision

Site visit made on 10 August 2021

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2021

Appeal Ref: APP/H5390/C/20/3262723

37 Richmond Way, London, W14 0AS

- 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 Ahmad Farahani against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
 - The enforcement notice, numbered 2017/00932/COMPWK, was issued on 29 September 2020.
 - The breach of planning control as alleged in the notice is, without planning permission erection of timber enclosure comprising canopy and timber panels.
 - The requirements of the notice are to remove from the land the timber enclosure comprising canopy and timber panels and all associated materials located to the rear elevation.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) 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.

Preliminary Matters

2. I sought clarification from the Council as to whether it intended to submit evidence that was referred to in its enforcement report but not provided with representations on the appeal. I subsequently received a number of photographs, a Planning Contravention Notice¹, and an email from a neighbouring resident. The appellant was offered opportunity to comment. No response was received.
3. The appellant and local residents have made representations regarding the need for and effects of the alleged timber enclosure; the appellant has also offered to modify the structure to remedy any harm it may cause. However, I am unable to consider the merits of the development because the appellant has not made an appeal on ground (a), which is that planning permission should be granted for what is alleged in the notice.
4. The appellant suggests that what took place on the site amounted to the repair of an existing structure rather than erection of a timber enclosure. While that argument could amount to a hidden appeal on ground (b) and/or (c) – that what is alleged did not occur or was not in breach of planning control – I find in this case that the question of what happened is best addressed in the context of time and ground (d), as discussed below.

¹ Dated 30 October 2019

The Appeal on Ground (d)

5. Ground (d) is that, on the date that the enforcement notice was issued, it was too late for the Council to take enforcement action. The onus is on the appellant to demonstrate that the operations involved in the erection of the alleged timber enclosure comprising canopy and timber panels were substantially completed, on the balance of probabilities, four years before the date of issue of the notice. The material date is 29 September 2016².
6. The Council accepts the appellant's claim that, more than four years ago, there was a canopy structure where the alleged enclosure now stands. However, the appellant does not dispute that 'repairs' were carried out less than four years before the notice was issued. The question, then, is whether the repair works were significant enough to amount to the 'erection of a timber enclosure' as alleged as a matter of fact and degree.
7. The appellant's case is that, when he took over the ground floor business at No 37 Richmond Way in January 2017, the canopy at the rear of the shop was in a hazardous state of repair and had to be brought up to a sound and acceptable condition. He took advice from a roofer who then lived in the same building, and, says that the structure had the same footprint and height as before and after the repairs were carried out.
8. The appellant's neighbours and customers have also made representations to the effect that a structure has been in place for over 10 years with the same size, shape, footprint and appearance. For example, it is suggested in an email from the roofer that the roof was simply changed for one that is water-tight and the building is the same now as it was prior to the work in January 2017.
9. However, there is no other evidence as to what works were undertaken to 'repair' the pre-existing structure. That is important because a building may be completely new even if it is identical to one that was previously on the land. Moreover, works to an existing building may be significant enough – as a matter of fact and degree – that the outcome is construction of a new building. Yet the appellant has not given me any precise or unambiguous evidence as to which parts of the enclosure, if any, were on the site more than four years ago.
10. The Council states that they were informed in 2017 that a timber canopy was under construction. The Council has provided case notes written by an Officer at that time, and they refer to the site owner telling the Council the canopy replaced an existing smaller canopy. The Council says that the alleged enclosure is indeed bigger than the pre-existing canopy - although the footprint and height are the same - because the new roof is flat rather than sloped thereby having a greater volume.
11. Photographs submitted by the Council confirm that the roof of the pre-existing structure initially sloped down at a steep angle and then at a more moderate angle from the main back wall of the host building. In contrast, the roof of the alleged enclosure projects out on a continuous plane from the rear elevation of the main building.
12. Looking at all of the evidence before me, it is plain that works were carried out in 2017 which resulted in changes to the form of the roof and volume of the enclosure attached to the main building. The appellant has not demonstrated

² s171B(1) of the Town and Country Planning Act 1990

that, on the balance of probabilities, the works did not amount to the erection of an enclosure as alleged – or, therefore, that the development was substantially completed by 29 September 2016.

13. I conclude that it has not been shown that, on the date that the enforcement notice was issued, it was too late for the Council to take enforcement action. The appeal on ground (d) does not succeed.

The Appeal on Ground (g)

14. The ground (g) appeal is that the six months given to comply with the notice is too short. However, a period of 18 months, as suggested by the appellant, is disproportionate having regard to the nature and extent of the works, and, as such, is unjustified.
15. I accept that it might take longer than usual to procure any necessary services or support from a builder in the circumstances created by the COVID-19 pandemic. Nevertheless, a period of six months would be a proportionate response to the breach of planning control and balance any issues arising from the current pandemic.
16. The appeal on ground (g) fails.

Richard S Jones

INSPECTOR