
Appeal Decision

Site visit made on 12 October 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 November 2021

Appeal Ref: APP/T5150/C/20/3259221
64B Cranhurst Road, London NW2 4LP

- 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 Konstantinos Siotos against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 13 August 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a roof terrace and shed structure situated on top of the flat roofed outrigger to the rear of the premises.
 - The requirements of the notice are:
STEP 1 Remove the unauthorised roof terrace and shed structure situated on top of the flat roofed outrigger, including the balustrade, railings, flooring materials and access steps.
STEP 2 Remove all debris, items and materials associated with the unauthorised development and its removal, from the premises.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by the addition of the word *external* after *and*, before *access* to Step 1 in Schedule 4 of the notice.
2. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by Mr Konstantinos Siotos against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

The Enforcement Notice

4. The appellant's arguments in relation to their ground (f) appeal also relate to whether the notice is a nullity because they consider that it does not enable the recipient to know exactly what steps the Council require to be taken. An enforcement notice is a nullity only if it is defective on its face, which means that it lacks some essential constituent or is incapable of being understood.
5. The government's Planning Practice Guidance (PPG) advises that an enforcement notice should enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control;

- and what steps the local planning authority require to be taken, to remedy the breach.
6. The appellant's case is that the requirement to remove access steps is ambiguous since it is not clear whether the Council are referring to both internal and external access steps.
 7. In my view, it is reasonable to conclude that *access steps* refer to any steps which can be used to access the development subject of the enforcement notice. It cannot be said that the notice is hopelessly ambiguous since that is how the appellant understood the notice, albeit they consider that the requirement to remove the internal steps is excessive – a matter which I shall consider under the appeal on ground (f).

The appeal on ground (f)

8. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the roof terrace and shed structure, including the balustrade, railings, flooring materials and access steps to be removed, I find the purpose is to remedy the breach of planning control.
9. Whilst it is a well-established principle¹ that a notice directed at a material change of use may require the removal of the internal works which facilitated the change of use, it is clear to me that the Council regard the development as operational development to which the 'four year' time limit applies. Thus, the notice can only require the removal of those works which constitute operational development.
10. Section 55(2)(a) of the Act excludes from the definition of development works for the maintenance, improvement, or other alteration of any building which (i) affect only the interior or (ii) do not materially affect the external appearance of the building.
11. Since the internal access steps affect only the interior of the building, they do not constitute development. Consequently, I find that the requirement to remove them is excessive. I will therefore vary the notice accordingly prior to upholding it. The appeal on ground (f) succeeds to that extent.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Felicity Thompson

INSPECTOR

¹ Kestrel Hydro v SSCLG & Spelthorne BC [2015] 1654 (Admin), [2016] EWCA Civ 784