
Appeal Decision

Site visit made on 9 February 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2022

Appeal Ref: APP/K5600/C/21/3279998
134-136 King's Road, London SW3 4XB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by G A Beaton Limited against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 29 June 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the installation of five air conditioning units on flat roof to the rear ground floor.
 - The requirements of the notice are:
 1. Remove the five air conditioning units in their entirety from the flat roof to rear ground floor and make good the roof, or;
 2. To install the air conditioning units and acoustic enclosure in complete accordance with the approved drawings A101, A201 of PP/18/03308 as per Appendix A attached to this notice.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) 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 deletion of the words, "to install the air conditioning units and acoustic enclosure in complete accordance with the approved drawings A101, A201 of PP/18/03308 as per Appendix A attached to this notice" from paragraph 5(2) of the notice; and,
 - the insertion of the words, "install the air conditioning units in complete accordance with the approved drawings of planning permission reference PP/21/05027 granted on 27 September 2021", in paragraph 5(2) of the notice.
2. Subject to the variations, the enforcement notice is upheld.

The appeal on ground (f)

3. The appeal on ground (f) is made on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters stated in the notice or, as the case may be, remedy any injury to amenity which has been caused by any such breach.

4. Section 173(4) of the 1990 Act states that the purpose of an enforcement notice is (a) remedy the breach of planning control, or (b) remedy any injury to amenity which has been caused by the breach.
5. The notice does not specify which of the two purposes it seeks to achieve. The appellant indicates that the purpose of the requirements is to remedy the harm caused by the development. However, the requirements of the notice are to either remove the air conditioning units or to install them in accordance with 2018 planning permission¹. As a result, the purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place or by making the development comply with the terms of any planning permission granted in respect of the Land.
6. The parties indicate that the 2018 permission cannot be implemented because there is insufficient room on the flat roof to install the acoustic enclosures in the location detailed in the approved drawings and allow them to function effectively.
7. In order for the notice to require compliance with a planning permission, that permission must be extant and capable of implementation. The parties agree that is not the case here. As such the notice should be varied to delete the requirement to install the units in accordance with the 2018 permission.
8. Since the notice was issued, planning permission has been granted to relocate the units on the roof and to install acoustic enclosures². That permission was granted subject to a condition requiring commencement within 3 years from 27 September 2021. As such the permission is extant and there is no evidence before me that it is incapable of implementation. As a result, I can vary the notice to require compliance with the terms, including the conditions and limitations, of the 2021 permission.
9. Nonetheless, there is no scope for the notice to require the installation of the acoustic enclosures since the enclosures do not form part of the matters enforced against. The requirement to install them as presently stated in the notice would therefore go beyond what is necessary to remedy the breach of planning control.
10. I will therefore vary the notice so that it requires either the units to be removed or the units to be relocated in accordance with the 2021 permission.
11. Otherwise, the appeal on ground (f) fails.

The appeal on ground (g)

12. The appeal on ground (g) is made on the basis that the time for compliance with the requirements of the notice is too short.
13. The notice states that compliance is to be within 3 months. In contrast, the appellant states that a period of 9 months would be more appropriate.
14. The appellant states that the commercial tenants could no longer occupy the premises if the units were without any alternative system to provide the correct internal environment, and hence this is too short a time to both undertake the

¹ LPA ref: PP/18/03308

² LPA Ref: PP/21/05027

works and to provide an alternative system to allow continuity of tenure and occupancy for those using the premises.

15. However, the notice, as varied, also gives the appellant the opportunity to retain the units in an alternative location in accordance with 2021 planning permission. The appellant states that the installation work will be complex given the need to balance the operational requirements, legal and procedural matters and the sourcing of the parts, machinery, materials and labour. However, the appellant has provided no evidence which indicates that such matters would prevent the installation of the units could not be carried out within 3 months. On that basis, a compliance period of 9 months is not justified.

16. The appeal on ground (g) therefore fails.

J Whitfield

INSPECTOR