
Appeal Decision

Site visit made on 29 June 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 18 July 2022

Appeal Ref: APP/V5570/C/21/3275636
313 Highbury New Park, London N5 2LB

- 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 Salman Kurt against an enforcement notice issued by the Council of the London Borough of Islington.
 - The enforcement notice is dated 14 April 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of 2 no. double-air conditioning condenser units and an extract flue mounted to the rear (north) elevation.
 - The requirements of the notice are I. Remove the 2 no. double-air conditioning condenser units and extract flue mounted to the rear (north) elevation. II. On completion of above remove from the land all materials and debris arising from the works.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. For the reasons above, the appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (d)

2. Ground (d) is that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.
3. Section 171B(1) of the Act indicates that for operational development such as the flue and air conditioning units, no action may be taken four years after the date of the substantial completion of the development. As the enforcement notice is dated 14 April 2021, the development needs to have been substantially completed by 14 April 2017 in order to be immune from enforcement action. The onus of proof lies on the appellant, and in order for the appeal to succeed on this ground, the evidence needs to be precise and unambiguous.
4. The appellant makes no reference to the flue under ground (d), and so I have considered only the air conditioning units in this part of the appeal. In support of his case, the appellant states that two air conditioning units have been present at the appeal site for over ten years, and were associated with the previous tenants of the pub.

5. The Council state that they are not aware of the exact date on which the units were installed. However, they note that the location of the existing units differs from the existing/proposed plans and the photograph included within their delegated report.
6. The drawing entitled 'existing floor plans', ref: (20)M-211, attached to planning application ref: P2019/2070/FUL, shows existing redundant AC units, which are described as two units stacked vertically. Conversely, the photograph indicates that the units are set side by side. There appears to be a discrepancy between what is demonstrated to be as existing in the planning history and what has been observed on the site.
7. The Council's evidence suggests that the units have been moved to different locations, making it unlikely that they have occupied the position at the time of the enforcement notice for the required four years or more. The appellant does not dispute this evidence. Moreover, he does not offer sufficiently detailed, substantive or corroborated evidence to support his stance that the units are immune from action due to the passage of time.
8. The appeal on ground (d) therefore fails.

The appeal on ground (f)

9. Ground (f) is that the steps required to comply with the requirements of the notice are excessive.
10. The appellant states that the units cannot be viewed from the highway, and that their replacement in accordance with the Council's requirements would be an appropriate remedy. The enforcement notice does not require the replacement of the units, only their removal. If the appellant wishes to replace or relocate them following their removal, he is free to pursue this possibility with the Council by way of a new planning application, if he so wishes.
11. The appellant says the Council have previously suggested moving the flue to a location on the north west of the building which, he says, is not visible from any highway. He argues that this would therefore be a more appropriate remedy to this element.
12. However, an enforcement notice should go no further than is necessary to achieve its purposes. To require the flue to be moved to a different location would result in a change to the previous condition of the land, and there is no statutory power to require an appellant to undertake anything other than a reversion to the condition the building was in before the breach took place. In any event, there is no evidence that planning permission is in place for such work. Again, the appellant may pursue the possibility of putting the flue in a different position once it has been removed.
13. However, I find that the requirements are commensurate with the purposes of the notice, and are not excessive. No alternatives have been identified that would be appropriate in this particular case.
14. The appeal on ground (f) therefore fails.

The appeal on ground (g)

15. Ground (g) is that the time given to comply with the notice is too short.

16. The appellant argues that, because the pub has been unable to function due to coronavirus restrictions over the last year, the time provided to comply with the enforcement notice is unreasonable. He suggests that, in order for the business to remain functional while a new application is put forward and determined for an alternative to the unauthorised development, a minimum of six months is needed for this process.
17. Whilst the coronavirus pandemic has undoubtedly thrown up difficulties and uncertainties for businesses, I am not clear from the appellant's submissions what specific problem arises from it in relation to the requirements.
18. The structures appear to be relatively small and lightweight, and there is no evidence to show that it would be particularly complex or time-consuming to remove them. I am therefore satisfied that the two months is sufficient for the physical carrying out of the works.
19. Conversely, I accept that this is a tight timescale for the securing of a new planning permission to relocate the units and flue. However, because the notice seeks to remedy injury to the amenity of neighbouring residents, it is necessary for the requirements to be carried out in a timely manner. I have had regard to the Council's suggestion that I request that all plant is switched off at the premises by 10pm. However, as I am not granting planning permission through this appeal, there is no mechanism for me to impose such a time limit on the operation of the plant.
20. I am mindful that the Council have the power to extend the compliance period, if they see fit, and they have indicated that they will allow up to three months to allow a new application to be determined.
21. On the evidence before me, however, I agree with the Council that two months is a reasonable period in which to comply with the requirements of the notice.
22. The appeal on ground (g) therefore fails.

Conclusion

23. For the reasons above, the appeal is dismissed and the enforcement notice is upheld.

Elaine Gray

INSPECTOR