



Appeal Decision

Site visit made on 5 September 2022

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th October 2022

Appeal ref: APP/Z5060/C/21/3272924

Land and premises at 931 Green Lane, Dagenham RM8 1DJ

- 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 Luis Shuti against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
 - The notice was issued on 7 April 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised development of a rear outbuilding/extension and outdoor covered seating at the front of the shop.
 - The requirements of the notice are:
 - remove the unauthorised rear outbuilding/extension in its entirety.
 - remove the unauthorised covered outdoor seating area in its entirety.
 - remove all subsequent waste material from the land.
 - The period for compliance with the requirements is within 3 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld.

Preliminary Matter

2. The appellant contends that the rear outbuilding/extension is an outdoor shelter and not an outbuilding/extension. They also make the same point in respect of the outdoor covered seating area at the front of the shop. Whilst the latter also extends around to the side of the premises, the enforcement notice is sufficiently clear and accurate to enable any of the persons on whom a copy of the notice was served to know what the matters alleged are to constitute the breach.

The appeal on ground (c)

3. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof here lies with the appellant. He claims that the rear outbuilding/extension and outdoor covered seating area at the front of the premises are permitted development (PD) and therefore planning permission is not required for them and consequently no breach of planning control has occurred.
4. The exact date when the development took place is unclear, but it was before the enforcement notice was served by the Council on 7 April 2021.
5. The appellant says that the development was undertaken to get his business back up and running safely in response to the Government's measures for

hospitality in response to the pandemic. I have no reason to doubt that, and numerous measures were introduced by Government in response to the pandemic to support businesses and so that they could open safely when lockdown restrictions were eased.

6. That said, the key consideration in this case is whether the development subject of the enforcement notice was permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) in force when the development was begun. This is because the GPDO does not grant retrospective planning permission. Schedule 2, Part 4, Class A was the relevant provision of the GPDO in force at the time when the enforcement notice was served. This allows the provision of moveable structures required temporarily in connection with and for the duration of operations being carried out on, in, under or over the land or land adjoining that land.
7. The outbuilding/extension to the rear is constructed from a timber and metal frame with substantial timber posts set on metal pads bolted into the ground. The structure could not have reasonably been brought on site as a completed entity given its size and the number and size of its component parts. There is no evidence to indicate that it has been moved since. Nor does it appear capable of being moved given its size, weight and means of construction, which means that it is physically attached to the ground and/or on a permanent base that is physically attached to the ground. The structure's weight alone would mean that it could not readily be moved. Within the structure itself are several lights, televisions, and heaters. Hence, the structure is served by electricity. Surface water is also collected by drainpipes and taken off site.
8. The outdoor covered seating area at the front and side of the premises is built from a metal frame with perforated metal sheeting and plastic sheeting on its roof. Its purpose is to provide shelter for customers to allow them to sit and consume food or drink from the premises. Hence, the structure and the use are physically and functionally linked. The structure is attached to several steel columns which have been bolted to the ground. Due to its size, weight and affixation to the ground it is permanent and not capable of being moved.
9. This analysis leads me to conclude that, as a matter of fact and degree, neither structure erected on the land is moveable. But, even if it were, there is no evidence from the appellant to indicate that they were erected in connection with any temporary operations on, in, under or over the land or land adjoining the land in question. On this basis, the development was not PD under Schedule 2, Part 4, Class A of the GPDO in force immediately prior to the enforcement notice being served.
10. I recognise that shortly after the enforcement notice was served, the GPDO was amended¹ (16 April 2021) and that those provisions have now been made permanent in a subsequent amendment to the GPDO². Whilst those provisions relate to moveable structures in connection with the sale of food and drink, they came into force after the enforcement notice was served. Regardless, it remains the case that both parts of the development that is subject of the notice are not moveable structures. Therefore, they would not be PD even if these more recent amendments to the GPDO applied.

¹ The Town and Country Planning (General Permitted Development) (England) (Amendment) (Coronavirus) Order 2021 No. 467

² The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2021 No. 1464

11. I am mindful of the changes made to pavement licences in response to the pandemic which allowed the use of removeable furniture. However, the development, for the reasons set out, is not removeable even if it was deemed to be furniture. The appeal on ground (c) therefore fails.

Other matters

12. I note the appellant's willingness to work with the Council and his points concerning communication. However, it is open to the appellant to engage with the Council to discuss any potential development proposals.
13. The appellant and an interested party raise points relating to the merit of the development which has taken place, but as there was no ground (a), I am unable to consider these points as part of this appeal.

Conclusion

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

Andrew McGlone

INSPECTOR