



Appeal Decision

Site visit made on 21 February 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 March 2023

Appeal Ref: APP/E5900/C/20/3262113

The Land at 123 Roman Road, LONDON E2 0QN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Shelim Ahmed against an enforcement notice issued by London Borough of Tower Hamlets.
 - The notice was issued on 1 October 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a wooden lean-to and canopy shelter with raised decking at the rear of the Property.
 - The requirements of the notice are:
 - 1) Permanently remove the wooden structure, wooden decking and canopy shown in photographs A-F in appendix 2 attached to the notice.
 - 2) Permanently remove all items fixed to and/or located inside the unauthorised structure, or on any walls under the unauthorised structure, including but not limited to: lamps, lighting, wiring, television screen monitor, food and drink preparation areas, fixed furniture.
 - 3) Make good any damage associated with compliance with steps 1)–2) above and remove all debris from the land.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed in so far as it relates to the raised decking but the appeal is dismissed and the enforcement notice is upheld in so far as it relates to the wooden lean-to and canopy shelter.

The ground (b) appeal

2. In appealing on ground (b) the burden of proof is firmly on the appellant to demonstrate that the matters stated in the notice relating to the erection of a wooden lean-to with a canopy and decking have not occurred as a matter of fact.
3. I saw the wooden lean-to, canopy and decking described in the notice at the site visit. Furthermore, the appellant states that he built the lean-to and canopy. The matters alleged have therefore occurred as a matter of fact. The appeal on ground (b) therefore fails.

The ground (c) appeal

4. This ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. Under a ground (c) appeal, the onus of proof is on the appellant to

show that there has not been a breach of planning control. In this case the appellant submits that the works do not amount to development and that the lean-to, canopy and decking are only temporary.

5. There are photographs from the Council dated 19 March and 8 April 2014 showing the decking being installed. It covers the full extent of the rear yard area, which extends to about 20m in depth and 6m in width and includes two levels separated by steps. The images show the ground had been prepared, levelling points had been laid and there was a cement mixer on site.
6. The images also show the framework of the first wooden lean-to had been erected. This extended almost to the decking steps (about 10m in depth) and covered most of the yard width. Later photographs from 2014 show the height of the lean-to, which extended as far as the sill level of the first floor windows and that it had a flat roof.
7. Photographs from 2016 show that the lean-to had been removed and photographs from 2017 show a new lean-to with a lower height and reduced depth had been erected with a sloping roof. In 2019 the design of the lean-to had changed again as the Council's photographs show additional timbers had been installed and lighting, heating and a canopy had been added.
8. The meaning of development is set out in section 55(1) of the Town and Country Planning Act 1990 and includes the carrying out of building, engineering, mining and other operations in, on, over or under land. Section 57(1) says that, subject to the provisions of the section, planning permission is required for the carrying out of any development of land.
9. Section 336(1) includes in the definition of the word "building" any structure or erection, and any part of a building, as so defined. Section 55(1A) confirms that such operations include rebuilding, structural alterations of, or additions to, buildings and other operations normally undertaken by a person carrying on business as a builder.
10. The lean-to the subject of the enforcement notice is substantially different from that built in 2014 and altered in 2017 and 2019. It is smaller and more complex with a different shaped roof than the 2014 structure and, as a matter of fact and degree, I find the rebuilding and the addition of a canopy to have amounted to an operation of development as defined by section 55(1).
11. With regard to its temporary nature, case law has held there is no single conclusive answer as to what constitutes a building operation but the size of the building, the degree of permanence and the degree of physical attachment to the ground are relevant tests. No one factor is decisive.
12. The floor area of the lean-to now covers less than half the size of the yard but nevertheless this is a significant area as it enables the placing of several chairs, sofas and tables in the lean-to and on the decking. It amounts to, in effect, an additional room for the restaurant.
13. Having regard to the ground work preparations, it would appear that the intention was for the lean-to and decking to be in use for some time, notwithstanding the landlord's future intentions to erect a two storey extension. In addition, the nature of the physical attachment of the decking to the ground and side walls and the installation of the vertical and horizontal timbers for the lean-to together with roofing felt, a separate canopy, lighting

and heating all indicate permanent fixings. Therefore, having regard to the three tests, it remains my view that as a matter of fact and degree the lean-to and decking amount to development.

14. In some circumstances the construction of a building can be “permitted development” under the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). The version of the GPDO in operation when the notice was issued had been amended in 2020 to reflect the changes to the Town and Country Planning (Use Classes) Order 1987, which introduced Use Class E, Commercial, business or service use. This replaced Use Classes such as A3 Restaurants.
15. Schedule 2, Part 7, Class A of the GPDO allows for the extension of Class E premises subject to various criteria. However, as the appeal site lies within a conservation area and the materials used in the lean-to are dissimilar to those used in the host building, it cannot be considered as permitted development under this Class.
16. Therefore, the lean-to and the decking amount to development for which express planning permission is required. The lean-to does not have the benefit of permitted development as it lies within a conservation area and planning permission for both developments has not been granted by the Council. The alleged matters therefore constitute a breach of planning control and the appeal under ground (c) fails.

The ground (d) appeal

17. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. As such, the appellant needs to show, on the balance of probabilities, that the installation of the decking and the erection of the lean-to were substantially complete more than four years before the notice was issued. The relevant date is 1 October 2016.
18. With regard to the decking, this was laid in 2014 and is visible in all the subsequent photographs taken by the Council. A couple of slats appear to be under repair in the 2016 photograph but otherwise the decking remains unaltered from when it was laid. It is therefore considered, in the absence of any significant information to the contrary, and on the balance of probabilities, that the decking was substantially complete in 2014. As this was more than four years before the notice was issued, the appeal on ground (d) succeeds in respect of the decking.
19. With regard to the lean-to, photographs show the original building erected in 2014 was removed in 2016 and replaced in 2017 with a smaller building, which was subsequently altered to a significant degree in 2019, such that it became a new building. In the absence of any significant information to the contrary, and on the balance of probabilities, I find the building the subject of the notice was not substantially complete until 2019, which is after the relevant date. The appeal on ground (d) therefore fails in respect of the wooden structure.

Conclusion

20. For the reasons given above, I conclude that the appeal in respect of the decking should succeed on ground (d) but the appeal in respect of the wooden

lean-to and canopy shelter should not succeed on ground (d) and the enforcement notice will be upheld.

D Fleming

INSPECTOR

