



Appeal Decision

Site visit made on 6 March 2023

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 March 2023

Appeal Ref: APP/G2713/C/22/3311618

Land at 219A High Street, Northallerton, North Yorkshire DL7 8LW

- 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 1990 Act as amended).
 - The appeal is made by Mrs Deba Crow Clark, Raine Leisure Limited, against an enforcement notice issued by Hambleton District Council.
 - The enforcement notice was issued on 17 October 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a steel framed structure.
 - The requirement of the notice is to: (i) Remove the steel structure and all associated materials from the land.
 - The period for compliance with the requirement is: within six 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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Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decision.

Procedural Matters

1. The land shown edged red on the plan attached to the Enforcement Notice (the notice) does not include the land on which the breach of planning control is alleged to have occurred. At my request, the Council submitted an amended plan to clearly show the land on which the breach of planning control is alleged to have occurred. Following which the Appellant was given the opportunity to comment.
2. I note the Appellant's point that the land incorporated within the amended red line boundary does not demonstrate the other land within their ownership. However, the notice and any accompanying plan is only required to indicate the precise boundaries of the land to which the notice relates¹. Accordingly, I will correct the notice by substituting the plan.
3. At paragraph 3 of the notice, the alleged breach of planning control is stated as 'the construction of a steel framed structure'. However, the requirement at paragraph 5(i) of the notice, 'Remove the steel structure and all associated materials from the land', does not include the word 'framed'. In the interests of clarity, I will vary the requirement at paragraph 5(i) to reflect the alleged breach by inserting the word 'framed'.

¹ Section 4(c), The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.

4. The power under section 176(1) of the 1990 Act provides that a notice may be corrected and varied provided that no injustice would be caused by doing so. I am satisfied that no injustice would be caused by correcting and varying the notice in the above respects.

Background

5. The steel framed structure which is the subject of the notice is a partially constructed first floor external seating area. A retrospective application for the terrace was refused on 15 December 2021 and dismissed at appeal on 5 September 2022². Following this, the Council issued the notice on 17 October 2022.

The appeal on ground (f)

6. The appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
7. When an appeal is made on ground (f), the starting point is to identify the purposes of the notice. Section 173(4) of the 1990 Act as amended sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place, or (b) remedying any injury to amenity which has been caused by the breach.
8. In this case and mindful of the variation set out above, the requirements of the notice are to: Remove the steel framed structure and all associated materials from the land. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred by restoring the land to its condition before the breach took place.
9. I note the Appellant's assertions that the structure is 'unusable' as an external first floor terrace by customers of the public house; and that, consequently, it does not give rise to any of the harmful effects to the living conditions of nearby residents which are cited in the refusal of the application for planning permission and in the dismissal of the appeal.
10. Moreover, I am aware of the other matters raised by the Appellant in relation to the possibility of submitting additional information and/or making amendments to the proposed terrace with the aim of addressing the Council's concerns in a revised, more comprehensive, application at some point in the future when their economic circumstances allow.
11. However, the planning merits of the steel framed structure may only be considered pursuant to ground (a), where that is pleaded and the fee has been paid. That is not the case in this instance and, whilst I recognise the Appellant's reasons for not doing so, it is not permissible to introduce arguments on the planning merits of the development in the context of an appeal on ground (f).

² Application Ref: 21/02100/FUL construction of a steel frame to the rear yard to create a new first floor roof terrace with 1.8m high privacy screening, steel staircase and retractable canopy and 2.4m high solid metal sheet screening to existing ground floor boundary fences; and Appeal Ref: APP/G2713/W/22/3292366.

12. I also note the Appellant's declaration that they are not in a financial position to have the steel framed structure removed. However, consideration of this matter is not within the remit of an appeal on ground (f), which is to determine whether the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control.
13. This matter could have been considered pursuant to ground (g), namely that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed, whereby the Appellant could have sought a longer time for compliance to see if their financial situation improves and/or raise the necessary funds. However, an appeal on ground (g) has not been pleaded.
14. In determining the appeal on ground (f), I have considered whether there is any 'obvious alternative' or 'lesser step' which would achieve the purposes of the notice with less cost and disruption. However, it is 'the construction of a steel framed structure' that constitutes the alleged breach of planning control. Anything less than removing it and the associated materials from the land would not remedy the breach and restore the property to its condition before the breach took place.
15. Therefore, I conclude that the steps required by the notice to be taken do not exceed what is necessary to remedy the breach of planning control, but are proportionate given the purpose of the notice. Accordingly, the appeal on ground (f) fails.

Conclusion

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

Formal Decision

17. It is directed that the enforcement notice is corrected and varied by:
 - the substitution of the plan attached to this decision for the plan attached to the enforcement notice.
 - in paragraph 5(i) the insertion of the word 'framed' after the word 'steel' and before the word 'structure'.
18. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

F Cullen

INSPECTOR



Plan

This is the plan referred to in my decision dated: 23 March 2023

by **F Cullen BA(Hons) MSc DipTP MRTPI IHBC**

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Scale: Not to Scale

