



Appeal Decision

Site visit made on 18 April 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 May 2023

Appeal Ref: APP/G5180/C/22/3309063

Artemis Clinic, 1st Floor, 106 – 108 High Street, West Wickham BR4 0ND

- 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 Mrs Elaine Gavin on behalf of the Artemis Clinic against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 14 September 2022.
 - The breach of planning control as alleged in the notice is:
"Failing to comply with condition 5 of planning permission 18/04970/FULL1 by accessing the roof area other than for maintenance and as a means of escape.
The planning permission was issued by the Council on 17 December 2018 and was for a first-floor rear extension on the land to provide additional physiotherapy/well-being therapy facilities. Condition 5 states "The flat roof of the escape route and the associated stairs shall not be used as a balcony or sitting out area and there shall be no access to the roof area other than for maintenance and as a means of escape."
 - The requirements of the notice are:
Cease accessing the roof area other than for maintenance and as a means of escape.
 - The period for compliance with the requirements is 7 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

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

The appeal on Ground (b)

2. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact. This has not been demonstrated. On the contrary, the appellant's document entitled 'The Artemis Clinic, BR4 0ND' dated 14 October 2022 states that *"We are maintaining our clinic by using the back door. That is what we are in breach of. Our permission is for fire and maintenance. We are applying for an amendment of our planning permission to include removal of waste and general bringing things in and out of the clinic. The planning permission as it stands does not meet our needs."*
3. Condition 5 of planning permission 18/04970/FULL1 states "there shall be no access to the roof area other than for maintenance and as a means of escape." The condition was imposed to "protect the amenities of adjacent occupiers."

Therefore, use of the flat roof and the staircase cannot be used for the “general bringing things in and out of the clinic,” and the appellant’s own statement above acknowledges that they are in breach of this condition.

4. Furthermore, the Council have also submitted a series of photographs of persons (provided by a third party) regularly accessing the flat roof area and staircase between the 25 May 2022 to 1 November 2022. A number of local residents have also confirmed that they have witnessed staff using the flat roof area to provide a means of access to and from the premises, in breach of condition 5.
5. Whilst the appellant states that access to the flat roof and staircase has been for maintenance only, including maintaining the exit for fire safety purposes, having carefully considered all of the evidence before me, I conclude, on the balance of probabilities, as a matter of fact and degree, the allegation in the notice had occurred when the notice was issued. There has therefore been a breach of planning control.
6. Accordingly, the appeal on ground (b) must fail.

Conclusion

7. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

R Satheesan

INSPECTOR