



Appeal Decision

Site visit made on 11 May 2023

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2023

Appeal Ref: APP/U5360/C/22/3297297

495 Kingsland Road, Hackney, London E8 4AU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Oz Burger (Mr Muhammed Ruhul Amin) against an enforcement notice issued by the London Borough of Hackney.
 - The notice was issued on 17 March 2022.
 - The breach of planning control as alleged in the notice is the installation of an extraction system.
 - The requirements of the notice are:
 1. Remove the extraction system at the rear of the Property as indicated in Appendix 1 'photograph of the extraction system';
 2. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;
 3. Upon completion of the above step, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Ground (d)

2. Under ground (d) the appellant argues that, by the time the notice was issued, it was too late to take enforcement action. It is for the appellant to demonstrate this, on the balance of probability.
3. The time limits for taking enforcement action are set out in s171B of the Act. In accordance with s171B(1), no enforcement action may be taken against operational development such as this extraction system after the end of the period of four years beginning with the date on which the operations were substantially completed. Since the notice was issued on 17 March 2022, it follows that the extraction system would need to have been substantially completed not later than 17 March 2018 in order to have been immune from enforcement action.
4. However, photographs provided by both parties, including historic Streetview images, demonstrate that the current external flue was not in place at that time. Indeed, the appellant confirms that the current extractor system was installed in 2021. Thus, it was not too late to take enforcement action against it when the notice was issued.

5. I appreciate that the current system replaced an older system which was in place at the same location at least from 2009 (as indicated by a Streetview image). However, the enforcement notice targets the current system, which is very noticeably different in appearance to the one it replaced. Consequently, whatever the merits of the new system compared to the old one, it was not too late to take action against it when the notice was issued.
6. For these reasons, the appeal on ground (d) fails.

Ground (f)

7. The appellant regards the requirement to remove the extraction system in its entirety as excessive, given that an extractor system has been present on the site for over 10 years. It is argued that the new system is an improvement on the older one and that its removal would necessitate the closure of the restaurant.
8. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the removal of the works in their entirety. This is consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a). Consequently, I do not regard the requirements as excessive.
9. I am mindful that the enforcement regime is intended to be remedial rather than punitive, but the appellant has not put forward any specific lesser measures for me to consider. A drawing labelled 'Proposed plans and elevations'¹ indicating a modified scheme has been submitted. However, it is not clear whether the appellant is proposing this as an alternative requirement for the notice. In any event, I have no information to show that it would address the Council's concerns relating to local amenity.
10. For these reasons I conclude that it has not been demonstrated that the purpose of the enforcement notice could be achieved with any steps other than those currently prescribed. Accordingly, the appeal on ground (f) fails.

Conclusion

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

Peter Willows

INSPECTOR

¹ Drawing No 18/808/003