



Appeal Decision

Site visit made on 6 June 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14TH JULY 2023

Appeal Ref: APP/T1410/C/22/3297649

Land at 2 Allfrey Road, Eastbourne BN22 8TL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Ahamed Benyahya against an enforcement notice issued by Eastbourne Borough Council.
 - The notice was issued on 18 March 2022.
 - The breach of planning control as alleged in the notice is: The unauthorised erection of boundary treatment to first floor flat roof to create roof terrace for amenity purposes.
 - The requirements of the notice are: i. Remove roof terrace boundary treatment in its entirety. ii. Clear all resultant debris.
 - The period for compliance with the requirements is: Two months from the date the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(d) 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.

Application for costs

2. An application for costs was made by the appellant against Eastbourne Borough Council. That application is the subject of a separate decision.

Reasons

3. The appeal is proceeding under ground (d) only. To be successful under this ground of appeal it is necessary for the appellant to demonstrate that, at the date when the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice.
4. The appeal site is a single planning unit with a primary use as a dwellinghouse. The use of the flat roof of the single storey rear extension to the appeal dwelling as amenity space associated with that dwelling, or for the temporary storage of building materials associated with ongoing lawful alterations to that dwelling, has not brought about a material change of use of the planning unit. The breach of planning control stated in the enforcement notice has not therefore facilitated an unauthorised material change of use and it is appropriate for me to consider whether it was lawful on the date the enforcement notice was issued with regard to section 171B(1) of the Act.
5. Section 171B(1) of the Act states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no

- enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
6. The breach of planning control specified in the enforcement notice would have needed to have been substantially completed by 18 March 2018 for the ground (d) appeal to succeed.
 7. The evidence indicates that the appellant erected scaffolding poles with fence and trellis panels attached around the perimeter of the single storey rear extension flat roof at some point prior to 9 August 2017¹. This would have acted as a safety barrier to allow use of the flat roof for standing on. Planning permission was sought retrospectively for those works in August 2017². A photograph was taken of a steel spiral staircase leading to the flat roof from a small courtyard area at the rear of the appeal site on 22 August 2017³. The application for planning permission was refused by the Council on 20 October 2017.
 8. Following the refusal of that planning application, the appellant removed the fence and trellis panels which had been attached to the scaffolding poles. In October 2018 the Council considered that as the flat roof was being used for the storage of building materials while work was taking place at the property, rather than for recreational purposes, it would not be expedient for any further action to be taken in respect of the scaffolding poles at that time. The Council therefore closed its planning enforcement investigation on 26 October 2018.
 9. The Council opened a new planning enforcement investigation on 1 February 2021 following a complaint that the flat roof was being used for amenity purposes. The Council's evidence states that the boundary treatment to the flat roof changed at some point between April 2018 and February 2022. This is corroborated by 2 photographs claimed to have been taken during those months⁴, with the latter showing fencing and trellis panels skirting the perimeter of the flat roof in a slightly different arrangement to those which previously existed⁵.
 10. It is the appellant's case that the scaffolding poles comprise the boundary treatment to the first floor flat roof referred to by the enforcement notice and that they have remained in place since before 9 August 2017. However, it is clear that the scaffolding poles only comprise part of that boundary treatment. Other parts of that boundary treatment include fencing and trellis panels attached to those scaffolding poles.
 11. I have not been provided with a specific date range as to when the scaffolding poles were erected as a barrier around the perimeter of the flat roof; it has only been stated that they were erected before August 2017. It has not therefore been demonstrated, on the balance of probabilities, that the scaffolding poles comprised lawful development when the fencing and trellis panels were added to them at some point between April 2018 and February 2022.

¹ The appellant's Appendix 3: the Council wrote to the appellant on 9 August 2017 referring to the alleged breach of planning control.

² The Council's ref: 171050

³ The appellant's Appendix 2

⁴ Paragraphs 5.1.5 and 5.2.2 of the Council's Statement of Case

⁵ As shown in the appellant's Appendix 6, where fencing panels comprised horizontal planks and lower trellis panels compared to those shown in the Council's photograph dated February 2022

12. When the fencing and trellis panels were added to the perimeter of the flat roof, they completed the roof terrace boundary treatment referred to by the enforcement notice. Together, they provide a more solid boundary which is greater in height than the scaffolding poles on their own. The fencing and trellis panels therefore form an important and integral part of the boundary treatment to the first floor flat roof referred to by the enforcement notice.
13. Although the scaffolding poles comprised the initial basis of the roof terrace boundary treatment, the development the subject of the enforcement notice was not substantially completed until the fencing and trellis panels were re-attached to the appeal property at some point between April 2018 and February 2022. That happened less than 4 years before the date on which the enforcement notice was issued.
14. As the breach of planning control the subject of the enforcement notice was not substantially completed at least 4 years before the date on which the enforcement notice was issued, it is not lawful under the provisions of section 171B(1) of the Act.
15. The appeal under ground (d) must therefore fail.

Conclusion

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

L Douglas

INSPECTOR