

Appeal Decision

Site visit made on 4 July 2023

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15TH AUGUST 2023

Appeal Ref: APP/J4423/C/22/3312962

411 - 415 Staniforth Road, Sheffield S9 3FQ

- 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 Mohammad Khan, Don Valley News against an enforcement notice issued by Sheffield City Council.
 - The notice was issued on 8 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an enclosed canopy structure on concrete and brick base, shown within the photos attached to the notice.
 - The requirements of the notice are to: remove the canopy, associated structure and base and make good the land to the front of the premises.
 - The period for compliance with the requirements is: two months.
 - The appeal is proceeding on the ground set out in section 174(2)(b) of the Act.
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Decision

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

Preliminary Matter

2. The appellant has argued that the previous owner had contacted the Council and had been told that if it is not a permanent structure then planning permission would not be required. The Council have noted this argument in their evidence. These are matters that would be considered under ground (c). Although, the appellant did not lodge this ground of appeal, I consider no party would be substantially prejudiced by me including ground (c) within my decision.

The appeal on ground (b)

3. The appeal on ground (b) is directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities'.
4. This ground of appeal was made on the basis that the person who built the canopy and base was the previous owner, and before the appellant took over the shop. However, the appellant acknowledges in their evidence that they took over the shop with them in place. The appellant also notes that if the canopy and base were not permanent, that planning permission would not be required. I shall deal with that point below in ground (c).
5. There is no dispute that the development the subject of the notice has in fact occurred. I also saw for myself at the time of the site visit the canopy structure and base were in place. Moreover, s174(2)(b) is worded in the past tense, and it is whether the breach had occurred by the date of issue of the notice. The appellant therefore acknowledges as a matter of fact the canopy structure and base existed at the time of the notice being issued.

6. The development has therefore occurred as a matter of fact and the appeal under ground (b) fails.

Appeal on ground (c)

7. An appeal on ground (c) is a claim that the matters alleged in the notice, if they occurred, do not constitute a breach of planning control. This could be because it is not development or that it does not require planning permission. The onus falls on the appellant to demonstrate, and the relevant test of the evidence is on the 'balance of probabilities'.
8. 'Development' is defined at section 55(1) of the Act to include the carrying out of building, engineering, mining or other operations in, on, over or under land. Section 336(1) of the Act defines "Building" to include "any structure or erection". Section 57(1) of the Act requires that planning permission is necessary for the carrying out of any development, subject to some specific exclusions. The key questions to be answered therefore are whether what has been done has resulted in a building, and if so whether it benefits from permitted development.
9. It has been established by the Courts that there are three primary tests for whether a structure is a building; its size, permeance and physical attachment and none of these factors are necessarily decisive on its own.
10. As I saw, the canopy structure and base are of a substantial size and are positioned to the front of the premises. The canopy is physically attached by metal support posts that are cemented into the concrete and brick base that protrudes from the front of the shop premises. This would require the canopy structure to be constructed and fixed into the base at the appeal site. The metal canopy roof is physically fixed by bolts to the support posts, and this is directly attached to the shop frontage. Guttering is affixed to the roof and support posts that connects to the premises, under the canopy roof is also wiring and fixed lighting, requiring a point of service. A mesh fence/grill is fixed to one side of the canopy posts and roof.
11. In my view, notwithstanding the appellant's comments, in light of the Council's evidence, photographs and the above factors including the physical and permanent characteristics of the canopy structure at the front of the premises and physical constraints of the site, and the length of time the canopy structure has been and is likely to remain in place. I consider it to be a building within the meaning of s336 of the Act.
12. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) Article 3 and Part 4, Class A ("Class A") permits temporary buildings and structures subject to limitations and conditions. Class A - includes *'the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of the operations being or to be carried out on, in under or over that land or on land adjoining that land'*.
13. The appellant has not provided any clear evidence of operations being carried out on, in, under or over land or on land adjoining it for a temporary period that the canopy and base would be required in connection with it. It has therefore not been demonstrated that the appeal development constitutes permitted development. In addition, the Council have stated there is no records of any pre-application advice being given on the development. As such, the canopy and

base would not be a temporary building or moveable structure for the purposes of Class A of Part 4 of the GPDO.

14. Since no planning permission has been granted for the development it amounts to a breach of planning control. Consequently, the appeal on ground (c) fails.

Conclusion

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

K A Taylor

INSPECTOR