



Appeal Decision

Site visit made on 6 September 2023

by J A Murray LLB(Hons) Dip.Plan.Env DMS Solicitor

an Inspector appointed by the Secretary of State

Decision date: 12th September 2023

Appeal Ref: APP/W2465/C/23/3319836

63-63A Imperial Avenue, Leicester, LE3 1JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Tomasz Walkowiak against an enforcement notice issued by Leicester City Council.
 - The notice, numbered Legal/11/118271, was issued on 2 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a single storey extension at the front of the property.
 - The requirements of the notice are to: Demolish the wood and plastic structure at the front of the property and remove all resultant materials from the property.
 - The period for compliance with the requirement is: 1 month after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (e) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. Whilst the appellant only cited ground (a) in his appeal form, his statement questions whether the notice was served correctly. It also suggests the "extension" has removable elements and can be classified as a temporary structure. The statement therefore reveals hidden grounds (e), (b) and (c), and given that the Council has responded to the substance of the arguments, no prejudice will result from addressing them.
3. The appellant's Statement of Case said it should be read in conjunction with a list of numbered plans, but these were not submitted with the appeal. I have seen no response to my request to submit those plans within a given time. However, they were submitted in connection with the refused, retrospective planning application Ref 20222111, which related to the appeal scheme, and they are clearly identified in the appeal Statement. As the Council will be aware of those plans and, unlike some 'on-line' documents, they will not have changed, I have taken the unusual step of finding them myself on the Council's website. They match what I saw on site and are consistent with the Council's description of the scheme in its enforcement report. No prejudice will therefore result from me conducting my own research in this case, to that limited extent, and nothing would be gained by delaying my decision further.

4. I conducted an unaccompanied site inspection. I was able to see all that I needed to see from the public highway and have had regard to the plans referred to. I also viewed the comparison sites mentioned by the appellant and discussed below.

Ground (e)

5. This ground is that copies of the enforcement notice were not served as required by s172 of the 1990 Act and the onus is on the appellant to make out his case on the balance of probability.
6. There is no suggestion that copies were not served on all the correct people. The appellant's concern is that, whilst the notice was hand delivered under cover of a letter dated 2 March 2023, this being the date of the notice itself, the notice indicated it would take effect on 28 February 2023.
7. In fact, the notice itself clearly stated it would take effect on 5 April 2023. It was the explanatory notes in the Annex that indicated it would take effect on 28 February 2023, if there were no appeal. Section 173(10) of the Act, and Regulations made thereunder, say a notice shall "be accompanied by an explanatory note giving prescribed information as to the right of appeal." Strictly then, the note is in addition to, but separate from the notice.
8. I am not persuaded that the error in the explanatory note means the notice was not served as required by s172. In any event, s176(5) provides that incorrect service may be disregarded if no substantial prejudice has resulted from the failure. The error was an obvious one and the appellant appealed before 5 April 2023. No one has been prejudiced and I am satisfied ground (e) should fail.

Grounds (b) and (c)

9. To succeed on these grounds, the appellant must prove on the balance of probability that: for ground (b), the matters alleged in the notice have not occurred; and for ground (c), if they have occurred, they do not constitute a breach of planning control. In this case, it is convenient to deal with those grounds together as, on the facts, they overlap.
10. The allegation namely, "the construction of a single storey extension", indicates operational development, most likely building operations. The Council also suggests the works might constitute an engineering operation under s55(1).
11. The appellant says, as the structure is mainly of wood, it can be classified as a temporary structure and parts of it can be removed. He does not therefore appear to suggest that no parts of the structure constitute operational development.
12. "Engineering" operations" are not defined in the Act, but s336(1) says the term "building" includes "any structure or erection." Furthermore, under s55(1A), building operations will include structural alterations of or additions to a building and "other operations normally undertaken by a person carrying on business as a builder."
13. The appeal structure comprises raised decking with timber fencing and black sheeting with advertising, up to a little over 1m above the level of the decking, and then the upper sections of the walls consist of transparent plastic sheeting.

This was rolled up at the time of my visit. The flat, PVC roof is supported by some 12 timber upright posts and approximately 18 timber joists laid horizontally across the upper framework and an additional beam spanning the middle. The upright posts are either bolted to the decking or fixed to the concrete.

14. The officer's enforcement report indicates that the structure measures 6m in depth from the front elevation of the host building and 8.9m¹ in width. Because of the sloping ground to the front of the property, the decking is raised significantly on its south-east side, such that the overall height of the structure is 3.1m on that side and 2.6m on the north-west side.
15. There was clearly an element of pre-planning for these works, such that they might be characterised as an engineering operation. However, the structure was obviously erected on site and, whether that was done by a builder, the work was self-evidently of a kind normally undertaken by a person carrying on business as a builder. Given the size of the structure, its permanence and degree of attachment to the ground, it can properly be described as a building.
16. The works have resulted in a single-storey extension to the host building, such that the matters alleged in the notice have occurred and, on the balance of probability, they amount to operational development without planning permission, in particular building operations. They therefore constitute a breach of planning control. Accordingly, grounds (b) and (c) must fail.

Ground (a)/the deemed application for planning permission

Main issue

17. The main issue is the effect of the development on the character and appearance of the host building and the area.

Reasons

18. The appeal site lies in a quiet, primarily residential, characterised by terraced and semi-detached houses, generally set back from the roads behind small front gardens. However, it also forms part of a small local centre, comprising the appeal premises (a pizza restaurant), a mini-market, convenience store and craft shop.
19. The appeal property and other commercial premises, clustered around the junction of Imperial Avenue and Guthridge Crescent, have deep forecourts with only concrete bollards separating these from the footway. They are 2-storey and look like former dwellings. Indeed, they appear to have living accommodation at first floor level.
20. The appeal development extends up to the bollards on the edge of the footway. It is also wider than the main host building, taking up most of its frontage. Notwithstanding its single-storey, flat roofed form, the quality of construction, and light weight upper section, the development constitutes an obtrusive, disproportionate, and incongruous addition in this prominent corner location. As such, it is detrimental to the character and appearance of the host building, the immediate, open street scene, and the area.

¹ The plans indicate 8870mm.

21. I saw no similar development in the vicinity, but the appellant refers to other schemes in the wider area. A seating area has been created on the paved forecourt in front of the restaurant at 17 Fosse Road South. I understand the Council is investigating this, so I make no comment on its overall acceptability. Nevertheless, I note it is a more modest arrangement than the appeal development. It consists of an enclosure formed by wooden planters, a little over 1m tall, placed directly on the paving slabs, beneath a sloping, plastic, or polycarbonate roof, which is supported by 2 metal poles.
22. As well as being less substantial, the structure at 17 Fosse Road South is in a different context to the appeal extension. It is set well back from the road in a larger local centre. No 17 is part of a linear parade of some 9 commercial properties. It is not in a prominent corner location and is separated from the substantial 2 ½ or 3-storey terraced houses opposite by a significant distance. In this context, it is not as obtrusive as the appeal development. In all these circumstances, and given that the Council is considering action, it does not serve as a precedent for the appeal development.
23. The structure at 203 Narborough Road is more comparable in that it includes a raised deck with low fence surround/balustrade. These elements have planning permission under Ref 20150942. The Council explains that, within that fenced enclosure, there was a marquee, but any enforcement action was initially on hold pending the outcome of other appeal proceedings at the site. The Council says the marquee was damaged in a storm and then removed, such that no action was required. In fact, when I visited, the marquee framework had been erected again. Although the sides were open, a roof covering had been installed comprising 2, pitched, plastic or polycarbonate sections.
24. Although the marquee framework is light, the overall structure at 203 Narborough Road is larger than the appeal development. However, again, the context is very different. The host building is much larger, and the enclosure covers a relatively small proportion of the frontage. Indeed, the Council identified as a benefit of that scheme, the fact that it would improve pedestrian safety by reducing the excessive width of the access and preventing vehicles parking on that area. Moreover, that site is on a busy road and forms part of what appears to function as a substantial district centre, with numerous other commercial premises and shops extending for a considerable distance in either direction along Narborough Road. In all these circumstances, this development is not comparable to the appeal scheme and provides no precedent for it.
25. Finally, the appellant refers to a structure at 73 Narborough Road. This is an unprepossessing, but modest single-storey metal addition to the side of a restaurant. It also has a polycarbonate roof and I understand from the Council that it serves as a bin store. Whilst unimpressed with the design, the Council says there is no other possible location for a bin store. That development is not like the appeal extension and, once again it is in a less prominent location and within a much busier district centre. As such, it is less obtrusive and does not serve as a precedent for the appeal scheme.
26. Based on his understanding that the Council did not object to the marquee at 203 Narborough Road, the appellant indicates that he would be prepared to replace the roof structure with something acceptable to the Council. Having regard to s177(1)(a) of the 1990 Act, it would be open to me to grant planning

permission in respect of the matters alleged, or part of those matters. I could not grant planning permission for the appeal scheme with a different roof. However, whilst the appellant has not pursued ground (f), suggesting lesser steps, it would in theory be possible to grant planning permission for the development minus the roof. Nevertheless, I am not persuaded this would overcome the harm identified. It would still leave a substantial area of raised decking and surrounding fencing which would remain incongruous and obtrusive in this location.

27. I am satisfied that the development causes unacceptable harm to the character and appearance of the host property and the area, and no conditions have been suggested which would overcome that harm.

Other Matters

The appellant asks me to consider the financial implications of the notice and says he will go out of business if he must remove the structure. Whilst I am alive to the considerable, general challenges currently faced by businesses, the appellant provides no evidence in support of this claim. In any event this factor would not outweigh the public interest in safeguarding the character and appearance of the area.

The planning balance

28. Having found that the development harms the character and appearance of the host property and the area, it conflicts with Policy 3 of the Leicester City Council Local Development Framework Core Strategy, adopted July 2014. Among other things, this requires high-quality, well-designed developments that contribute positively to the character and appearance of the local natural and built environment. This is in terms of factors such as scale, layout, high quality architecture, massing and materials and this policy seeks to promote an uncluttered street scene.
29. The development also conflicts with saved Policy PS10 of the City of Leicester Local Plan 1996 – 2016, adopted January 2006. I am satisfied that the development conflicts with the development plan as a whole.
30. Following submission of the evidence for this appeal, the National Planning Policy Framework (the Framework) was revised in September of this year. However, the revisions do not materially alter the relevant parts of the earlier version. The revised Framework still indicates that good design is a key aspect of sustainable development. It says decision makers should ensure development proposals function well and add to the overall quality of the area; are visually attractive as a result of good architecture; are sympathetic to local character; and that permission should be refused for development that is not well designed. The relevant development plan policies are consistent with the revised Framework.
31. There are no material considerations which indicate that planning permission should be granted despite the conflict with the development plan.

Conclusion

32. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on

the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

J A Murray

INSPECTOR

