



Appeal Decision

Site visit made on 26 October 2023

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th January 2024

Appeal Ref: APP/J4423/C/23/3321591

261 Staniforth Road, Sheffield S9 3FP

- 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 Kaleem Akhtar against an enforcement notice issued by Sheffield City Council.
 - The notice was issued on 11 April 2023.
 - The breach of planning control as alleged in the notice is without planning permission: to the front of the Land: the erection of a wooden pergola, fencing, two storage containers clad with timber including over hanging canopies (operating as "chaska grill" and chaska chai"), the provision of decking enclosed by timber balustrading, the erection of timber frames supporting festoon lighting, and the provision of an extraction flue; and to the rear of the Land: a marquee has been erected.
 - The requirements of the notice are to: I) remove the pergola, fencing, storage containers, extraction flue, decking, balustrading and timber support structures to the front of the property; II) Remove the marquee; and III) Cease the use of the land to the rear of the building for the siting of a marquee.
 - The period for compliance with the requirements is: 3 months, from the date the notice comes into effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - in Section 3 deleting all of the words and their substitution with "Without planning permission, to the front of the Land the erection of a wooden pergola, fencing, two storage containers clad with timber including over hanging canopies (operating as "chaska grill" and chaska chai"), the provision of decking enclosed by timber balustrading, the erection of timber frames supporting festoon lighting, and the provision of an extraction flue.";
 - deleting all of Section 5(II) and 5(III).
2. Subject to the corrections and variations, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matter

3. In the interests of natural justice, both main parties were invited to make representation on the alleged breach of planning control relating to the erection of the marquee, and the requirements set out at Section 5(II) and 5(III) of the notice as drafted. I have had regard to these representations in coming to my decision.

The notice

4. The notice as drafted at Section 3, includes and describes the allegation '*..and to the rear of the Land: a marquee has been erected*'.
5. The Council in their evidence have confirmed that the rear marquee was the subject of a previous enforcement notice which was issued on 22 December 2015 (2015 notice) to secure the removal of the marquee. The Council set out that the marquee was removed, and the present marquee constitutes the erection of a reinstated or restored marquee within the meaning of s181(3) of the Act, and as such s181 of the Act could therefore be relied upon. The appellant has argued that the marquee as erected has been in place since at least April 2019 with supporting evidence by way of a Google Street View image dated April 2019, so the 2015 notice was completed in 2018. As such, I consider from the evidence before me the marquee has been reinstated or restored following compliance with the 2015 notice.
6. The Act at s181 relates to the effect of an enforcement notice against subsequent development. At s181(1) of the Act it states that compliance with an enforcement notice, whether in respect of (a) the completion, removal or alteration of buildings or works; (b) the discontinuance of any use of land; or (c) any other requirements contained in the notice, shall not discharge the notice.
7. S181(3) goes on to say that, if any development is carried out on land by way of reinstating or restoring buildings or works which have removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered.
8. Consequently, the 2015 notice has not ceased to have effect, and the 2015 notice would have an enduring effect against subsequent development including carrying out reinstatement or restoring of buildings or works (the marquee), and that any later re-breach of requirement can be enforced against. This would mean under s181(1) and s181(3), the marquee in situ, remains enforceable under s179 and remains enforceable under the 2015 notice.
9. Reference from the appellant has been made to not deleting the second requirement of the land, as it would be applied retrospectively in the 2015 notice. This would appear to relate to cease the use of the land for the siting of the marquee, which was not a requirement in the 2015 notice, it is not a matter for me in this appeal to consider the validity of the 2015 notice.
10. However, even if I agreed with the appellants comments the requirements should square up and follow logically from the allegation, and that would be once the marquee is removed from the land this would achieve the purpose of the notice. Thus, the use of the land for the marquee would cease to exist. Moreover, the 2015 notice clearly shows the land the notice relates to shown edged red on the plan attached to the notice where a marquee is in situ.
11. Therefore, I will correct and vary the notice accordingly relating to the erection of the marquee and the subsequent requirements relating to the marquee using the powers available to me under s176(1) of the Act, as it would not

result in injustice to any party. It cannot cause injustice to the appellant because, it and the variations to the requirements, will make the notice less onerous.

12. In addition, subject to the correction and variations, it is not necessary for me now to consider the matters of the marquee further in the appeal on grounds (d) and (f). They only need to be considered in respect of the remaining aspects of the alleged breach; the erection of a wooden pergola, fencing, two storage containers clad with timber including over hanging canopies (operating as "chaska grill" and chaska chai"), the provision of decking enclosed by timber balustrading, the erection of timber frames supporting festoon lighting, and the provision of an extraction flue.

The appeal on ground (d)

13. In order for an appeal on ground (d) to succeed it has to be shown that at the time of the notice was issued it was too late for enforcement action to be taken. In particular it has to be shown that the erection of a wooden pergola, fencing, two storage containers clad with timber including overhanging canopies, decking enclosed by timber balustrading, timber frames supporting festoon lighting, extraction flute were substantially completed more than 4 years before the date on which the notice was issued. The relevant date therefore is 11 April 2019. For this legal ground of appeal, the Courts have established that the onus of proof falls to an appellant¹, with the test of the evidence being on the balance of probabilities².
14. Much of the appellant's evidence relates to the marquee of which I have dealt with above. In respect of the other unauthorised development which forms the allegation in the corrected notice. The appellant has not disputed that these have been sited at the appeal land. Moreover, the appellant's evidence sets out that the owner paid and installed the units around the coronavirus outbreak and pandemic, thus there is no evidence provided to support their ground (d) appeal or certainty of dates that they were substantially completed more than 4 years before the date the notice was issued.
15. For these reasons, I conclude, on the balance of probabilities, that the development was not substantially completed more than 4 years before the notice was issued. Therefore, it was not too late for the Council to take enforcement action and the appeal on ground (d) fails.

The appeal on ground (f)

16. This ground of appeal is that the steps required to be taken by the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)).
17. Requiring the unauthorised developments to be removed would do no more than to remedy the breach that has occurred. Consequently, it cannot be an excessive requirement. The appellant has not produced any substantive evidence to support their ground (f) appeal and that the notice's requirements

¹ *Nelsovil v SSE* [1962] 13 P&CR 151

² *Thrasyvoulou v SSE & Hackney LBC (No1)* [1984] JPL 732

exceed what is necessary to remedy the breach, or identified any alternative or lesser steps that would do so.

18. Instead, the appellant's case is that they acted in desperation to stave off closure and redundancy and the action is dis-proportional to the development. They also raise concerns over the Council's handling of investigations with much reference made to alternative developments in the wider area.
19. The matter of the Council's handling of the investigation and/or other schemes does not relate to the steps required to achieve the requirements of the notice, and there is no scope to consider whether the requirements are excessive in terms of their impact on an individual for an appeal or in response to overcoming the public objections made on ground (f). Regarding the structures being temporary, there is nothing before me to support this or suggest that the unauthorised development would fall to be permitted development. Moreover, there is no ground (a) appeal for me to consider the planning merits of the case.
20. For the above reasons, I conclude that the ground (f) appeal fails.

Conclusion

21. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

KA Taylor

INSPECTOR