



Appeal Decision

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 30th January 2024

Appeal Ref: APP/D1265/C/23/3321802

93 Weston Road, Easton, Portland, Dorset DT5 2DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Cengiz Zorel against an enforcement notice issued by Dorset Council (the LPA).
- The enforcement notice was issued on 21 April 2023.
- The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use from (Former Class A3) now Class E(b) restaurant to a hot food takeaway (Sui Generis) (including but not limited to the sale of kebabs and pizzas for consumption off the premises).
A breach of condition 3 of Planning Permission (ref: 98/00551/COU) for Change of Use from Shop to Restaurant that specifically states that the premises shall not be used for the sale of hot food to be consumed off the premises.
Without planning permission, a uPVC shop front has been installed. Not only is the uPVC material inappropriate, but the style of window is unsympathetic to the building and alters the balance and strips out the character that the previous window frontage gave to the building.
An unauthorised illuminating shop sign has been sited at the premises in breach of Class 4b of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
- The requirements of the notice are:
 - 1) Permanently cease the unauthorised hot food takeaway use.
 - 2) Permanently remove the illuminated sign.
 - 3) Permanently remove the unauthorised flue (As illustrated at Appendix 1).
 - 4) Permanently remove the uPVC shop frontage and unauthorised advertisement (As illustrated at Appendix 2). Then either:
Reinstate the timber frame frontage (As illustrated at Appendix 3), or: construct the principal elevation in accordance with the planning permission granted under reference WP/20/00709/FUL illustrated on approved drawing number 2904:241/005 Rev A, showing the North-West elevation (Appendix 4).
- The period for compliance with the requirements is:
 - 1 month from the date this Notice takes effect for items 1 and 2.
 - 3 months from the date this Notice takes effect for items 3,4 and 5.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Procedural Matters

1. It is considered that the appeal can be determined on the papers – that is, without a site visit – without causing prejudice to any party. This is because the appeal is made solely on ground (g) and I am satisfied I can proceed to a decision on the evidence before me.

The Notice

2. Section 1 of the enforcement notice states that there has been a breach of planning control within S171A(1)(a) of the Act which relates to the carrying out of development without the required planning permission. Section 3 of the notice alleges a material change of use and operational development has taken place both of which amount to development without permission under S171A(1)(a). However, section 3 of the notice also sets out that the breach of planning control includes a breach of a condition on a planning permission which falls within S171A(1)(b) of the Act.
3. It is clear the notice is directed against both development without planning permission and a breach of condition. I will therefore correct section 1 of the notice to refer to both limbs of S171A(1) accordingly. No injustice would arise to the appellant or the LPA.
4. Within section 3, the notice alleges the installation of a uPVC shop front without planning permission. However, it goes on to state that the material is inappropriate, that the style of window is unsympathetic to the building and it harms the character of the building. Such wording is a description of the reasons why the notice was issued, not a description of the breach of planning control. I will therefore correct the notice to delete the wording from section 3 and insert it within section 4 of the notice which relates to the reasons for issuing the notice.
5. The notice also alleges a breach of planning control consisting of the siting of an illuminating shop sign sited in breach of Class 4b of The Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The National Planning Practice Guidance recommends the use of S224 and S225 of the Act to deal with the removal of unauthorised advertisements. However, I see no reason in law why a notice under S172 of the Act could not be used to deal with an unauthorised advertisement if it amounts to a breach of planning control for the purposes of the Act. There is no appeal on ground (c) before me and thus the question of whether the advert does or does not amount to a breach of planning control does not fall to be considered.
6. The use of the word permanently four times within the requirements of the notice is unnecessary, having regard to the provisions of S181(1) of the Act which states that compliance with an enforcement notice shall not discharge the notice. The notice can be varied to delete the words without injustice to the appellant or the LPA.
7. Section 5(4) of the notice requires the removal of the uPVC shop frontage and unauthorised advertisement. However, section 5(2) of the notice requires the removal of the illuminating sign cited in the alleged breach in section 3. The requirement to remove the advertisement in section 5(4) is therefore unnecessary and I will vary the notice to delete it. No injustice would arise to the appellant or the LPA.
8. The notice requires the removal of an unauthorised flue from the building. The installation of a flue does not form part of the breach of planning control against which the notice is directed. However, case law has established that, where a notice is directed against a material change of use, it can require the removal of works which have facilitated the breach, even if they do not in themselves form part of the breach. I am satisfied that is the case here.

The appeal on ground (g)

9. An appeal on ground (g) is made on the basis that the time period specified in the notice for compliance falls short of what should reasonably be allowed. The notice requires the hot food takeaway use to cease and the illuminating sign to be removed within one month from the date the notice takes effect. It requires the flue to be removed, the uPVC shop frontage to be removed and either the timber frame frontage to be reinstated or the construction of the principal elevation in accordance with a planning permission within three months of the date the notice takes effect.
10. The appellant argues that the requirement to cease the use within one month is unreasonable on the basis that the disconnection of utilities and extraction equipment will require specialist contractors who are unlikely to be available within one month. However, the appellant has not provided evidence that any enquiries have been made to such contractors to ascertain their availability, nor to seek a professional opinion on the length of time needed to undertake the disconnection.
11. Nonetheless, the appellant does indicate that they employ several members of staff who would need to be made redundant. It seems to me that such a process would reasonably take longer than one month. Likewise, the appellant says they will need to terminate their commercial lease with the landlord of the property. Again, it seems reasonable to suggest that such a process will take longer than one month. A period of three months to cease the use would be more appropriate to facilitate those actions.
12. The appellant also says that the requirement to remove the sign within one month is unreasonable as a builder will need to be employed and scaffolding may need to be erected over the highway which requires a licence. Likewise, the appellant says the removal of the flue will require specialist contractors to be employed, who are unavailable within a three month period.
13. However, no evidence has been provided that the appellant has sought the availability of such contractors to ascertain whether or not they would be available within one month in the case of the sign or three months in terms of the flue. I see no reason therefore why the sign cannot be removed within one month or the flue within three months.
14. Finally, the appellant says the installation of a replacement timber frame frontage would require the services of window contractors to construct and install bespoke windows and doors at the property. It is said that the lead time for the fulfilment of new orders is typically four to five months. However, again, the appellant has provided no evidence that they have sought the availability or otherwise of such contractors within the period. The assertion that it may not be possible to source such contractors in the requisite time period is in itself insufficient to justify an extension to the compliance period.
15. Nevertheless, as the appellant points out, if they chose the alternative requirement to construct the principal elevation in accordance with the planning permission cited in the notice, then they would need to discharge pre-commencement conditions before implementing the permission. I agree that it is unlikely the appellant will be able to obtain the approval of the LPA for the pre-commencement conditions, source a contractor and complete the reconstruction of the front of the building within three months. A period of six

months seems more reasonable to undertake that process. Since requirement 5 offers the appellant an alternative, it is reasonable to my mind that the same time period for both alternatives is allowed for. Similarly, it seems to me that the process of removing the existing uPVC shop frontage and replacing it will be carried out in a single process. I will therefore vary the notice to extend the time period for compliance with requirement 4 and 5 to six months.

16. The appeal on ground (g) therefore succeeds in part.

Formal Decision

17. It is directed that the notice is corrected by:

- inserting the words, "and paragraph (b)", between the words "(a)" and "of" in section 1 of the notice;
- deleting the words, "not only is the uPVC material inappropriate, but the style of window is also unsympathetic to the building and alters the balance and strips out the character that the previous window frontage gave to the building", from section 3 of the notice
- inserting the words, "not only is the uPVC material inappropriate, but the style of window is also unsympathetic to the building and alters the balance and strips out the character that the previous window frontage gave to the building" between the words "pollution." and "It" in section 4 of the notice.

18. And varied by:

- deleting the words "permanently" from section 5(1), 5(2), 5(3) and 5(4) of the notice;
- deleting the words, "and unauthorised advertisement" from section 5(4) of the notice;
- deleting the words, "1 Month from the date this Notice takes effect for items 1 and 2 "and "3 Months from the date this Notice takes effect for items 3,4 and 5" from section 6 of the notice; and,
- inserting the words, "(1) 1 month from the date this Notice takes effect for requirement 2, (2) 3 months from the date this Notice takes effect for requirements 1 and 3, (3) 6 months from the date this Notice takes effect for requirements 4 and 4", in section 6 of the notice as the time for compliance.

19. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

J Whitfield

INSPECTOR