



Appeal Decision

Site visit made on 26 March 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03rd April 2024

Appeal Ref: APP/X5210/C/23/3331243

Land at: Ground Floor Commercial Unit, 57 Belsize Road, London NW6 4BE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Ms Laura Schinider, Silk Route Import & Export Ltd. against an enforcement notice issued by the Council of the London Borough of Camden.
 - The notice was issued on 31 August 2023.
 - The breach of planning control as alleged in the notice is without planning permission: the erection of a wooden deck on the pavement outside the premises.
 - The requirements of the notice are: 1. Totally remove the timber deck that has been installed outside the shop premises; and 2. Make good any damage caused as a result of the above works.
 - The period for compliance with the requirements is within 1 month of the notice taking effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) 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.

Preliminary Matters

2. The Council's Officer Report which recommended the issue of the notice includes a photograph of the deck. Most of the deck had been removed by the time of my site visit, but sections of it appeared to remain in place.
3. The appeal form indicates that an appeal has been made under ground (f) only. However, the appellant's submissions claim that the deck did not require planning permission and that even if it did, planning permission should be granted. Such arguments should be put forward as part of an appeal under grounds (c) and (a). As no fee has been paid in respect of an appeal under ground (a), there is no ground (a) appeal or deemed planning application for me to consider¹. I shall consider the ground (c) arguments put forward. The planning merits of the development are not relevant to the appeal under grounds (c) and (f).

Ground (c)

4. To succeed under this ground of appeal the appellant would need to demonstrate, on the balance of probabilities, that the alleged breach of planning control stated in the notice did not constitute a breach of planning control. It is claimed that planning permission was not required for the deck on account of its nature and size.

¹ Section 177(5)-(5A) of the Act

5. Section 55 of the Act provides the meaning of 'development' and section 57 states that planning permission is required for the carrying out of development. The meaning of development includes the carrying out of building, engineering, mining or other operations in, on, over or under land, and 'building operations' includes operations normally undertaken by a person carrying on business as a builder.
6. The deck covered an extensive area of the pavement, creating a raised and partially enclosed seating area. It was a significant interruption to the highway which would ordinarily be expected to be undertaken by a person carrying on business as a builder.
7. The evidence provided indicates it is more likely than not that the construction of the deck comprised the carrying out of building operations over the land which required planning permission. No evidence has been provided to demonstrate otherwise, on the balance of probabilities. I have not been referred to any planning permission which the deck may benefit from. The deck therefore constituted a breach of planning control.
8. The appeal under ground (c) must fail.

Ground (f)

9. To succeed under this ground of appeal the appellant would need to demonstrate that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
10. The notice requires the total removal of the deck and the making good of any damage caused by its removal. The purpose of the notice is therefore to remedy the breach of planning control, rather than any injury to amenity.
11. The total removal of the deck and the making good of any damage caused by its removal are reasonable requirements to remedy the breach of planning control. I have not been provided with any alternative steps which may achieve the purpose of the notice.
12. The appeal under ground (f) therefore fails.

Conclusion

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

L Douglas

INSPECTOR