



Appeal Decision

Site visit made on 14 May 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2024

Appeal Ref: APP/N5090/C/23/3327499

126 Cricklewood Broadway, London NW2 3EE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Andrew Nicolaou against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 30 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a wooden enclosure along with tarpaulin covers dropping down the sides of an existing awning canopy forming a ground floor front extension.
 - The requirements of the notice are:
 - 1 Demolish the wooden enclosure to the front of the premises, the tarpaulin covers dropping down both sides of the awning situated directly above and all other associated fittings and fitments.
 - 2 Permanently remove all constituent materials resulting from the demolition works from the property.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

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

Procedural Matters

2. Arguments relating to the planning merits of the unauthorised development that has been undertaken, including the benefits of the development, can only be taken into consideration in an appeal made on ground (a). Since there is no ground (a) appeal I cannot take into account the planning merits of the development put forward by the appellant in their submissions.

The ground (d) appeal

3. The onus is on the appellant under ground (d) to make the case that, at the time the enforcement notice was issued, it was too late to take action against the matters stated in the notice. The enforcement notice is directed at the alleged erection of a wooden enclosure along with tarpaulin covers dropping down the sides of an existing awning canopy forming a ground floor front extension. Consequently, the appellant needs to show that the matters alleged

in the notice occurred at least 4 years before it was issued (which was 30 June 2019). If the Council has no evidence of its own, or from others, to contradict or otherwise make the version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is, on the balance of probability, sufficiently precise and unambiguous.

4. However, the appellant has not provided any evidence that the structure was more than four years old at the time the notice was served. Nor is Google Streetview photographs conclusive on this matter since this only shows that the structure was put in place sometime between March 2019 and November 2020. Furthermore, the Council served a Planning Contravention Notice (PCN) in an attempt to establish when the structure was built, but unfortunately, the appellant did not respond.
5. It is well established in planning law that the onus rests with the appellant to make out his or her case. However, on the evidence before me, I find that burden has not been satisfactorily discharged in this particular case.
6. On the balance of probability, I conclude that at the time the notice was issued it was not too late to take enforcement action against the alleged breach of planning control.
7. The ground (d) appeal therefore fails.

Conclusion

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

R Satheesan

INSPECTOR