



Appeal Decision

by **J Whitfield BA (Hons) DipTP MRTPI**

an Inspector, appointed by the Secretary of State

Decision date: 11th July 2024

Appeal Ref: APP/H4505/C/24/3341013

Caspian Kebab, The Cottage, 18 Talbot Terrace, Birtley DH3 2PQ

- 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 Daniel Boroumand against an enforcement notice issued by Gateshead Council.
 - The enforcement notice was issued on 14 February 2024.
 - The breach of planning control as alleged in the notice is: without planning permission, the erection of a structure comprising of a metal framework and slate tiled monopitch canopy.
 - The requirements of the notice are:
 1. Remove the unauthorised structure comprising of a metal framework and slate tiled monopitch canopy indicated A in photograph 1 which is attached to this notice.
 2. Restore the land to its condition prior to the breach taking place by repairing any damage arising from the installation of the metal framework.
 3. Remove from the Land all materials and debris arising from compliance with steps (i) and (ii) above.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
-

Decision

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

Appeal on ground (f)

2. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
3. S173(4) of the Act sets out that purposes of an enforcement notice are: (a) to remedy the breach of planning control; or (b) to remedy any injury to amenity caused by the breach.
4. The notice does not state explicitly which of the two purposes it seeks to achieve. The alleged breach is the erection of a structure comprising of a metal framework and slate tiled monopitch canopy. The notice requires the removal of the framework and canopy and the restoration of the land to its condition prior to the breach taking place. I therefore find that the purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place under S173(4)(a) of the Act.
5. On that basis, the requirements to remove the framework and the canopy, and to the restore the land to its condition before the breach took place do not

exceed what is necessary to remedy the breach of planning control. In essence, the requirements are not excessive.

6. The appellant argues that a solution can be found which preserves the canopy and enhances the heritage value of the building with the assistance and engagement of the Council. The appellant also indicates the canopy has benefits for public safety and customer satisfaction.
7. However, since there is no appeal on ground (a), it is not open to me to consider the planning merits of any such alternative. Thus, I cannot consider whether there is an alternative form of development which would overcome the planning harm stated in the notice or indeed whether the benefits for public safety and customer satisfaction, would outweigh such harm.
8. The appeal on ground (f) therefore fails.

Conclusion

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

J Whitfield

INSPECTOR