



Appeal Decision

Site visit made on 27 August 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2024

Appeal Ref: APP/U5360/C/23/3317478

29-35 Upper Clapton Road, Hackney, London E5 8AY

- 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 Karl Sohi on behalf of Hackney Building Supplies Limited against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 23 January 2023.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a multi-level free standing storage unit.
 - The requirements of the notice are:
 1. Remove the multi-level free-standing storage unit that has been erected directly adjacent to 231 Brooke Road as indicated in Appendix 1;
 2. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;
 3. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is 3 months.
 - 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. 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.

The appeal on ground (c)

2. In this ground of appeal, it is necessary to show that there has not been a breach of planning control. The onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability. The appellant considers that they do not require planning permission for the free-standing storage unit/rack.
3. Under s55(1) of the 1990 Act, 'development' comprises 'two limbs':
 - 1) The carrying out of building, engineering, mining, or other operations in, on, over or under land (operational development);
 - 2) The making of any material change in the use of any buildings or other land.

4. It is clear that the allegation is referring to 'operational development,' and that the erection of a multi-level free standing storage unit relates to a 'building operation.' Operational development' comprises activities which result in some physical alteration to land which has some degree of permanence. The term 'building operations' is defined for the purposes of the 1990 Act in s55(1A) as including:
 - (a) demolition,
 - (b) rebuilding,
 - (c) structural alterations of or additions to buildings, and
 - (d) other operations normally carried on by a person in business as a builder.The list is not exhaustive.
5. The appellant has submitted a number of supporting documents and photographs which demonstrate the historical use of the site for open storage. Nevertheless, the notice is attacking the multi-level storage unit itself, which does not benefit from planning permission, and not the use.
6. I also note that the photographic evidence submitted demonstrates items are stored on the site, which are taller than the current storage unit. Section 336 (1) of the Act includes in the definition of the word '*building*' any structure or erection, and any part of a building, as so defined. This description has been interpreted by the Courts to include structures which would not ordinarily be described as buildings. Three primary factors were identified as decisive of what was a building: (a) that it was of a size to be constructed on site, as opposed to being brought on to the site, (b) permanence, (c) physical attachment. No one factor is decisive.
7. From the evidence submitted, I acknowledge that the storage unit may not have required a builder to erect them. Nevertheless, the structure required construction from multiple component parts on site. I also observed that the structure was bolted to the ground, and there is little evidence before me to demonstrate that the structure is moved around the site. Indeed, its current position is the same, as that shown in the photograph attached to the enforcement notice.
8. Furthermore, the overall size and scale of the structure would be consistent with a building. Based on the particular circumstances of this case, as a matter of fact and degree, the free-standing storage unit are a structure that falls within the definition of the word '*building*' in s336 (1) of the Act.
9. The appellant submitted a photograph which demonstrates how the storage unit's height has been reduced and no longer exceeds the boundary fence. However, under ground (c), I must consider whether the development was in breach when the notice was issued, and not the subsequent alteration.
10. I therefore find that, on the balance of probabilities, the matters stated in the notice amounts to a building operation for the purposes of s55 of the 1990 Act. Planning permission is required for these works. There is none in place, and the works are not permitted development. Therefore, based on all the evidence before me, there has been a breach of planning control, and the appellant has not discharged the onus on him to demonstrate otherwise.

11. Accordingly, the appeal fails on ground (c).

The appeal on Ground (f)

12. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
13. The enforcement notice requires the removal of the multi-level free standing storage unit from the land and the restoration of the land to its condition before the breach took place. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity. As the notice does no more than seek remedy of the breach, it is not excessive.
14. The appellant has submitted a letter from their solicitor addressed to the Council which states that the height of the multi-level storage unit has been reduced by over 50% and is willing to give strict assurances that no materials will be stored above a certain height. The appellant has also provided a photograph taken from 2010, that they believe shows that the area concerned has had materials stored from at least 2010, and also that the use for open storage has occurred for more than 70 years. The appellant also highlights the benefits of the multi-storey racking in terms of safety and improved visual appearance, access and circulation space.
15. However, the appellant has chosen not to pursue a ground (a) appeal and therefore the deemed planning application has lapsed. As such, the planning merit arguments submitted by the appellant about amenity, and the benefits of the development, cannot be introduced under ground (f). Under this ground of appeal, I can only consider whether the steps exceed what is necessary to remedy the breach. That would not be achieved by the alternative steps outlined by the appellant, as they would not remedy the breach of planning control and planning permission would still be required by the revised scheme advanced by the appellant.
16. On this basis, the Ground (f) appeal is misconceived and fails.

Conclusion

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

R Satheesan

INSPECTOR