

Appeal Decision

Site visit made on 17 September 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2024

Appeal Ref: APP/Y2620/C/23/3333117

Lily-Mai's Bar and Grill, New Street, Cromer NR27 9HP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Andrew Hubbard against an enforcement notice issued by North Norfolk District Council.
- The notice was issued on 1 November 2023.
- The breach of planning control as alleged in the notice is without planning permission: The unauthorised erection and installation of an externally protruding ventilation extraction system at the side of a commercial premises.
- The requirements of the notice are to permanently remove the ventilation extraction system at the side of a commercial premises.
- The period for compliance with the requirement is: 3 months.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).

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

Preliminary Matters

1. The enforcement notice refers to the lack of an immunity period in relation to listed buildings. However, that would relate to development subject of a listed building enforcement notice issued under section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (Listed Buildings Act) under which Act there is no immunity period. As this enforcement notice was issued under section 172 of the Town and Country Planning Act 1990 (the TCPA), the development would be subject of the time limits under section 171B of the TCPA.
2. The relevant time limit in this case would be four years beginning with the date on which the operations were substantially completed. Section 176 of the TCPA states that I may correct any defect, error or misdescription in the enforcement notice if that would not cause injustice to the appellant or local planning authority.
3. I note the appellant states that the ventilation extraction system was installed and in working order since January 2021, and had been running for almost 2 years at the date of the appeal. As a result, it is clear that the development had not been substantially completed for a period of four years.

An appeal under ground (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control could not succeed. On that basis, no injustice would be caused to the appellant or local planning authority if I were to correct the enforcement notice in this regard, so I will do so.

The Appeal on Ground (f)

4. An 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to remove the ventilation extraction system subject of the allegation, in order to restore the building to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
5. The appellant has suggested that the submission of a noise assessment would be excessive. I understand this may have been requested as part of a planning application for the system. However, it is not referred to in the requirements of the enforcement notice that only require removal of the system.
6. If the system were boxed in, this may reduce the noise from the system. However, that would require additional works. Had there been a ground (a) appeal such that there would be a deemed application for planning permission, I could have granted planning permission for the whole or part of the existing development to remain. However, boxing in the system would require additional works that it is not possible to consider in the context of this appeal.
7. As a result, I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).

Formal Decision

8. It is directed that the enforcement notice is corrected by the deletion of the words: "It appears to the Council that the breach of planning control has occurred on a Grade II Listed Building and therefore there is no immunity period and so the alleged breach cannot become immune from enforcement action" in section (4) Reasons for Issuing This Notice and substitution of the words "It appears to the Council that the breach of planning control has occurred within the last 4 years. Therefore the alleged breach has not become immune from enforcement action."
9. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

AJ Steen

INSPECTOR