



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 18 October 2024

Appeal Ref: APP/T5150/C/23/3324687

104-106 Windermere Avenue, Wembley HA9 8RB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Silverio do Rosario against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 15 May 2023.
 - The breach of planning control as alleged in the notice is: The erection of a canopy extension and fence to the front forecourt of the premises.
 - The requirements of the notice are: Step 1. Remove all items contained within the canopy extension, then demolish the canopy extension and remove the fence and restore the shopfront back to its original condition before the unauthorised development took place; Step 2. Remove all debris, materials and items arising from the carrying out of step 1 from the premises, ensuring that the condition of the land is restored to what it was before the breach took place.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is varied by the deletion of the words:
 - "Remove all items contained within the canopy extension, then" in Step 1; and
 - Deleting the word "shopfront" and its substitution with the word "land" also in Step 1.
2. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

3. There is no deemed planning application to consider. As such, there are no matters of planning merit before me that may have required a visual site inspection. In any event, the Council has supplied several photographs showing the unauthorised development. Furthermore, the alleged benefits of using the extension to the business and the local community are also not matters I can consider. The grounds of appeal made only require consideration of whether the requirements of the notice exceed what is necessary to remedy the breach of planning control, and whether the time for complying with those requirements is unreasonably short. I have the detailed written evidence from both sides on these grounds.
4. In view of the above, I have determined the appeal without the need to visit the site. Neither side has been prejudiced by this course of action.

Ground (f)

5. Whilst I appreciate the Council's point that the items under the canopy, such as tables and chairs, would need removing for safety reasons, how the canopy is demolished and the protection of items underneath it, would be a matter for the appellant. It may also be ambiguous to require such items to be removed when the Council has no intention of attacking their presence and does not object to tables and chairs being under the existing retractable awning. Also, it seems to me that no works are required to the shopfront of the premises. The Council only seeks to have the outside forecourt of the land restored to its original condition. To ensure there is no doubt about these matters, I intend to vary Step 1 accordingly. These variations cause no injustice to either party.
6. As for the existing front awning, it is clear to me that the notice only attacks the unauthorised canopy extension and so the use of the existing front awning would remain unaffected.
7. Subject to the above, the notice attacks the canopy extension and the fence. The notice's requirements seek to have those works removed and for the land to be put back to the way that it was before the unauthorised works took place. Therefore, the purpose of the notice falls under s173(4)(a) of the 1990 Act, which is remedy the breach of planning control by restoring the land to its condition before the breach took place. That is the context for considering the ground (f) appeal.
8. The actions the notice requires do no more and no less than seek to reinstate the land back to its previous condition. Consequently, they do not exceed what is necessary to remedy the breach of planning control. If the appellant considers that a 1m high fence around the external seating area could be erected, that is a matter for them away from this appeal. They have also not confirmed this is what they would do anyway. The ground (f) appeal fails.

Ground (g)

9. Dismantling the extension and fence and removing the resulting debris from the land could be done within three months. If the appellant seeks planning permission for an alternative arrangement, the Council has the power under s173A(1)(b) of the 1990 Act to waive or relax any requirement of a notice, including the compliance period, if that was considered appropriate. That would, however, be a matter for the Council to consider away from this appeal depending on the prevailing circumstances, such as if progress was being made on a different scheme.
10. The period for compliance does not fall short of what should be reasonably allowed. The ground (g) appeal thus fails.

Conclusion

11. I shall uphold the enforcement notice with variations as outlined above.

Gareth Symons

INSPECTOR