
Appeal Decision

Site visit made on 11 November 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2024

Appeal Ref: APP/E5900/C/24/3342026

The land at Smokestack, 35 Sclater Street, London E1 6LB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr David Carter of Smokestack against an enforcement notice issued by the Council of the London Borough of Tower Hamlets.
 - The notice was issued on 8 February 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of awning and a marquee on the land outlined in red (as shown in Appendix 1).
 - The requirements of the notice are to: a) remove the awning (as shown in photograph A of Appendix 2). b) remove the marquee and associated fixtures (as shown in photograph B of Appendix 2).
 - The period for compliance with the requirements is two (2) months from the date this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).
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Decision

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

Reasons

2. An appeal on ground (c) is that those matters alleged on the enforcement notice (EN) do not constitute a breach of planning control.
3. First, the appellant says that the alleged awning has previously been granted a Lawful Development Certificate (LDC) under section 191 of the Act (Ref: PA/21/00226/NC). They also consider the alleged marquee accords with Class G, Part 2, Schedule 2 of The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 3) Order 2021 ("the 2021 GPDO"), which came into force on 2 January 2022. Those provisions have since been included in The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) ("the GPDO"). The appeal site relates to a restaurant with an outdoor seating area.
4. The LDC was granted by the Council as it appeared that, on the balance of probability, the awning had been substantially completed and in continuous operation for more than 4 years before the submission of that application on 2 February 2021. The plans submitted with the LDC application show a steel and canvas awning attached to the Sclater Street elevation extending from the return in that elevation for 6.15 metres. Images submitted with the LDC application show the awning finishing broadly level with the Cygnet Street ground floor elevation, which is recessed from the upper floors of the building.
5. The awning subject of the LDC remains in situ, but it has been extended to the side to increase its length. As a result, the awning now finishes flush with the first-floor elevation on Cygnet Street. Further, the roof of the awning now has

a translucent top. The roof sits on top of the awning's metal frame. The roof material was replaced from that which covered the awning when the LDC was granted due to wear, tear, and weathering.

6. Any LDC granted should be precise and more than simply a title or label, so there is not room for doubt about what was lawful at that particular date. This is helpful to assess any subsequent changes against. The LDC granted was based on the evidence submitted that included the plan showing a steel and canvas awning, and the LDC's description is an "awning on shopfront".
7. Even if I set aside the change to the roof material, the awning is now larger than the LDC awning due to the additional metal frame fixed to the LDC awning. Despite the overlap, it is not the same development subject of the LDC. Having regard to section 55(1), (1A), and (2) of the Act, the works to extend the awning are an addition to the building and thus a building operation. Further, as the awning has extended closer to Cygnet Street near to its junction with Sclater Street, and as the awning alters the external appearance of the ground floor of the building, which was recessed from the upper floors and includes a translucent top, I consider the change materially affects the external appearance of the building. For these reasons, the awning is 'development', for which there is no planning permission.
8. The plans submitted with the LDC state that the awning's roof material was canvas. The change to the roof material materially affects the building's external appearance even though it was done to overcome issues experienced. Even if I am wrong about the roof material, it would not alter my view that this awning is 'development' and constitutes a breach of planning control.
9. While the appellant is willing to remove the additional part of the awning and a condition requiring a canvas covering, my consideration of the appeal relates to ground (c) only. I have also noted points about the cladding to the building, but this appeal relates to the alleged breach of planning control, which is concerned with the awning and a marquee, not something else.
10. I agree with the appellant that the awning is a permanent structure, but the appellant considers that the marquee is not, as the metal legs are removeable and fitted by a simple pin that does not need tools to be used. The canvas fabric covering for the walls was also designed to be removeable.
11. Given that the appellant claims that the marquee is permitted development (PD), since the GPDO (or the 2021 GPDO) does not grant retrospective planning permission, the development undertaken would need to have been permitted by the GPDO in force when the development was begun. It is unclear when works to the marquee began, and there is contrasting evidence.
12. An invoice for the doors and roll down windows is dated 4 December 2020, but that date is before the LDC was granted on 8 March 2021. This therefore seems implausible given the photographs of the awning subject of the LDC. It would appear more likely that the marquee was erected sometime between 8 March 2021 and 17 August 2022, when the first invoice for zip repairs is dated. I am unable to be more precise, but given the appellant's case, I have considered whether the marquee was PD having regard to the 2021 GPDO.
13. The Council's photographs of the marquee show numerous metal legs covered by canvas fabric at regular intervals around the awning in situ. The upper parts of either side elevation and the Sclater Street elevation are covered with

canvas fabric affixed to the metal posts and/or the awning. Behind that wrap of canvas fabric is further canvas fabric that would appear to be capable of being rolled up or down to create walls for the outdoor seating area. The appellant's evidence does not contradict these images and there is also no suggestion that the marquee has changed since the development was begun.

14. Even if the marquee is a moveable structure for the purposes of Class G of the 2021 GPDO, paragraph G.1(c) of Class G says that development is not permitted if the height of the moveable structure would exceed 3 metres.
15. The appellant says that the marquee's height falls within the height limitations of Class G, but there is no substantive evidence to confirm that. Based on the plans submitted with the LDC application, the lower part of the LDC awning is 3.010 metres above ground level. The wrap of canvas fabric is at that height for the section closest to Sclater Street, while the wrap follows the angle of the awning in situ to a height above that indicated on the plan. Even if the wrap of canvas fabric were not an integral part of the moveable structure, the canvas fabric walls on the Sclater Street elevation are hung by clips that are attached to the awning's metal frame in multiple places across its full length. The walls that I saw were the same as those in the photographs, which the appellant claims to be PD. That said, the awning facilitates the marquee being hung, and it appears to be of a height greater than 3 metres at this point.
16. The additional part of the awning is of the same height to the LDC awning where it meets the first floor of the building. Even if I were to discount the wrap of canvas fabric on the Cygnet Street elevation, the canvas fabric walls on this elevation are hung by clips attached to a length of wire that extends from the metal leg at the corner of Sclater Street and Cygnet Street to the metal post next to the first-floor projection on the Cygnet Street elevation. The wire here was attached in a join in the metal frame next to a CCTV camera on the underside of the first floor. Given this and based on the plans submitted with the LDC application, the height of the moveable structure would exceed 3 metres in height. Although the wrap of canvas fabric on this elevation would have screened the wire from view based on the photographs, there is no mention that the means of attachment for the walls have changed. To achieve the necessary drop for the walls, the wire would need to have been in the same or a comparable position to facilitate that when the development began, given the length of the clips and rope used to hang the walls.
17. For the reasons set out, the marquee was not PD when the development was begun by virtue of Class G, Part 2, Schedule 2 of the 2021 GPDO. It has not been necessary for me to consider whether the marquee is a moveable structure, as its height means that it would not have been PD in any event. Hence, the awning and marquee subject of the EN are both 'development' which materially affects the external appearance of the building and are not lawful, having regard to the LDC. Nor are they permitted by the GPDO or have received planning permission. While the appellant may not have received the Council's warning letter from November 2023, the appeal on ground (c) fails.

Conclusion

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

Andrew McGlone

INSPECTOR