



Appeal Decision

Site visit made on 8 January 2025

by **Siobhan Watson BA(Hons), MCD, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 January 2025

Appeal Ref: APP/R5510/C/23/3326783

Swan Wharf Moorings, Unit 9 Swan Wharf Business Centre, Waterloo Road, UXBRIDGE, UB8 2RA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr David Chalmers (H and H Concierge) against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The notice was issued on 20 June 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of:
 - i) Polytunnel structure on land adjoining the Grand Union Canal to the land North of Cowley Mill Road, Cowley, Uxbridge (shown in the approximate position hatched blue on the site plan);
 - ii) Jetty structure on land forming part of the Grand Union Canal on the north side of Cowley Mill Road, Cowley, Uxbridge (shown in the approximate position hatched in green on the site plan).
 - The requirements of the notice are to: (i) Demolish the polytunnel structure; (ii) Demolish the jetty structure; (iii) Remove from the land all debris, items, fixtures and fittings, building materials, plant and machinery resulting from the demolition works (i) and (ii).
 - The period for compliance with the requirements is: 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f), (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 corrected and varied by:
 - the deletion of 3(ii) and 5(ii) under the alleged breach and requirements, respectively.
 - the deletion of 2 months and its substitution with 4 months as the time for compliance;
2. The appeal is allowed in so far as it relates to the “jetty”.
3. The appeal is dismissed and the enforcement notice is upheld, as corrected and varied, insofar as it relates to the polytunnel.

The appeal on ground (e)

4. The appellant says that the Council did not use the supplied email and phone details and that the notice was found tied to the appellant’s boat on 24 July 2023.
5. S.329 (3B) of the Act does not allow the service of an enforcement notice by email. However, S.329 (2)(b)(ii) says that a notice is duly served on an occupier if it is “affixed to some object on those premises.” The appellant does not dispute that his boat was on the premises.

6. After finding the notice, the appellant was able to appeal within the timescales. The deadline for appeal was 1st August 2023 and the appellant's appeal statement was not due until 27 November 2023. There was adequate time to make submissions. Therefore, although I consider that the notice was properly served, even if it had not, no injustice has been caused.
7. The appeal therefore fails on ground (e)

The appeal on ground (b)

8. An appeal under ground (b) is that those matters have not occurred.

Jetty

9. The appellant has provided a Cambridge dictionary definition of "jetty" as "a wooden or stone structure built in the water at the edge of a sea or lake and used by people getting on and off boats". The Council has not disputed this definition. The Council has provided no description of the alleged jetty and has not disputed the evidence about it contained in the appellant's statement.
10. I saw at my visit that the alleged jetty structure was in the shape of a rectangular box which looked a bit like a caravan but it was floating on water, rather than stationed on land. It had side panels, windows, a roof and door to get inside. It also had a rudder and a motor. The appellant says it is licenced as a boat. It was attached to the canal tow path by ropes and was not attached to anything else. At my visit, the appellant untied the ropes and took it out for a short cruise down the canal, turned it around and moored it back at the towpath. It is clear to me that it is not a "jetty" and that it is not operational development.
11. In respect of the "jetty", the appeal succeeds on ground (b). Therefore, there is no need for me to consider appeals (c) (d), (f) and (g) in relation to the "jetty".

The Polytunnel

12. There is no dispute that a polytunnel has been constructed and therefore the appeal fails on ground (b) in so far as it relates to the polytunnel.

The appeal on ground (c)

13. Ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. The appellant has made no argument that the polytunnel does not constitute development or that it did not require planning permission. The appeal on ground (c) therefore fails.

The appeal on ground (d)

14. The ground of appeal under s174(2)(d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In this case the relevant period is 4 years from the substantial completion of the development. The 4-year period must have occurred before the enforcement notice was served. The onus of proof is on the appellant.
15. There is no dispute that there has been a polytunnel on the land for a considerable number of years, however, the dispute is over whether the one that stands now is

the same one. The Council says that the current one replaced an earlier one but the appellant disputes this and maintains that it is the same polytunnel.

16. The appellant has submitted a photograph of a polytunnel which he claims dates from 2008. The appellant has also provided a photograph of the front of an Estate Agent's particulars advertising the site, which includes a "40' x 25' polytunnel store" and a photo of a polytunnel is on the particulars. The appellant says these particulars date from 2006 but there is no date on the photographed particulars.
17. Both photos show the polytunnel to be of a similar size and dimension to the one that exists now. However, the polytunnel on the Estate Agent's particulars had a translucent polythene cover and the shape of the steel frame can just be made out. I saw at my visit that the current polytunnel had a green tarpaulin with other tarpaulins underneath laid across a steel frame with wooden slats on top.
18. The appellant says that the steel frame is original and that it has deep foundations and would have required the use of industrial cutting tools and excavation equipment to remove it. However, whilst I appreciate that dismantling an entire frame and removing foundations would be a large job, that factor is not determinative in respect of whether the whole of the frame is original.
19. Moreover, the multiple tarpaulin coverings supported by timber slats indicate that the building is not what it was when it had a clear polythene cover. Furthermore, the existing building has concrete blocks at either end of the building and at the bottom sides of the building. There is no evidence from the submitted photographs that these concrete blocks were on the structure in the photographs. I accept that the 2008 image shows the timber door and panels at the end of the polytunnel and these appear to remain, but photograph's date is only assertion. The extent of the alterations are not clear enough to demonstrate that the polytunnel has not been rebuilt.
20. The appellant has also supplied Google photographs of a polytunnel dated May 2019 and earlier but again, these are not clear enough to demonstrate that it is the same polytunnel that exists now.
21. For the above reasons, and, on the balance of probability, the evidence does not precisely and unambiguously demonstrate that the original polytunnel remains on the land and that, as a matter of fact and degree, a new polytunnel was not substantially constructed on the land within four years of the date of the notice. In this regard, I do not find that the evidence supports the contention that the polytunnel that was on the land when the notice was issued had been in situ for four or more years. Therefore, I conclude that the ground (d) appeal fails.

The appeal on ground (f)

22. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the removal of the building in its entirety. This is consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a).

23. The appellant has set out a number of alternative measures the notice could require instead of the total removal of the building. These include submitting a flood risk assessment and then, reducing the size of the polytunnel and/or relocating it so that it is located in the flood zone of least risk. He also suggests altering the appearance and dimensions of the polytunnel.
24. It is important to note that the whole of the structure is unauthorised. Consequently, only the removal of the building will fully remedy the breach of planning control. That said, the enforcement regime is intended to be remedial rather than punitive, however, there is no provision for me to consider a flood risk assessment or a consequent amended design under ground (f). In any event, no such details are before me.
25. In relation to step (iii) of the requirements, the appellant has suggested that the building materials should be recycled and re-used on site where possible. However, retaining parts of the demolished polytunnel on site risks being injurious to visual amenity.
26. The ground (f) appeal therefore fails.

The appeal on ground (g)

27. The compliance period is two months. The appellant says that there is a labour shortage and it would be difficult to find suitable trades people to undertake the work within that period. Given the large size of the structure, I consider it proportionate to extend the compliance period to 4 months. To this extent, the appeal on ground (g) succeeds.

Conclusion

28. For the reasons given above, I conclude that the appeal should succeed in part only. I will uphold the notice but with corrections to remove the allegation and requirements in relation to the “jetty”. I will also vary the notice in respect of the compliance period.

Siobhan Watson

INSPECTOR