
Appeal Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 18 February 2025

Appeal Ref: APP/J4423/C/24/3349602

Land at 10 Fulford Close, Sheffield S9 5PR

- 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 Sami Musa against an enforcement notice issued by Sheffield City Council.
 - The enforcement notice was issued on 4 July 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of a roof over existing fenced area to the front of the dwellinghouse to create an enclosed structure.
 - The requirements of the notice are:
 - (i) Remove from the land the fencing panels, support posts, gates and roofing materials which form the enclosed structure to the front of the dwellinghouse
 - (ii) Remove any waste materials from the land arising from compliance with 5(i).
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) 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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Summary Decision: the appeal is dismissed and the enforcement notice is upheld

Procedural matters

1. The appellant initially made an appeal on ground (a) as set out in section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act), namely that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The appellant requested an extension to the period in which to pay the fee for the deemed planning application that arises out of an appeal on ground (a), which was duly extended until 4 September 2024. However, despite a reminder being sent on 2 September 2024, the fee was not received and the appeal on ground (a) duly lapsed.
2. This left the appeal to be considered on grounds (d) and (f) as set out in section 174(2) of the 1990 Act. In view of the issues raised by those grounds of appeal, I consider that in this case there is no benefit to be gained by undertaking a site visit. Accordingly, I have determined this appeal purely on the basis of the written and photographic evidence that is before me.

The appeal on ground (d)

3. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellants must show that the development was substantially complete on the date four years before the notice was issued. The test in this regard is the balance of probability and the burden of proof is on the appellant.
4. The time limits for taking enforcement action are set out in section 171B of the 1990 Act. In most cases, development becomes immune from enforcement if no action is taken within 10 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024. However, for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024, that development becomes immune from enforcement within 4 years of substantial completion. The appellant indicates on the Appeal Form that the fence and roof have been in place for 15 years. I have accordingly proceeded on the basis that the date within 4 years of substantial completion is applicable in this case.
5. The difficulty is that the appellant's appeal ground on (d) is only briefly stated. The appellant's appeal on this ground is not supported by any documentary or photographic evidence to demonstrate that the breach of planning control alleged in the notice was substantially complete on the date four years before the notice was issued.
6. Moreover, the Council has provided photographic evidence to show that in 2023 the roof was very different to that which existed on the date the enforcement notice was issued. It follows that the development subject to the enforcement notice could not possibly have been substantially complete on the date on the date four years before the notice was issued.
7. This is therefore not a situation where the local planning authority has no evidence of its own to contradict that of the appellant or make his version of events less than probable. On the contrary, I find that the appellant's evidence is not (and never could have been) sufficiently precise to counter the photographic evidence produced by the Council. I therefore conclude that the Council was in a position to take enforcement action on the date the notice was issued. Accordingly, the appeal on ground (d) fails.

The appeal on ground (f)

8. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice are to remove from the land the fencing panels, support posts, gates and roofing materials which form the enclosed structure to the front of the dwellinghouse. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.

9. The appellant points out that in discussion with a Council Officer some eight months prior to the notice being issued, he was advised that it was only necessary to lower the roof to the point where it became level with the fence. However, as issued, the breach of planning control alleged in the enforcement notice is the erection of a roof over existing fenced area to the front of the dwellinghouse *to create an enclosed structure* (emphasis added). It is the latter to which the appeal on ground (f) must relate.
10. I note that the breach of planning control to which the notice relates is made clear in the enforcement notice itself, which at paragraph 4 states that "as there have been recent significant amendments by the addition of a roof structure, which is attached to the existing fencing, it is now deemed that a new development exists which is within the timeframes for enforcement action". I concur with that statement.
11. The requirement at paragraph 5(1) of the notice is to remove from the land the fencing panels, support posts, gates and roofing materials which form the enclosed structure to the front of the dwellinghouse. I am satisfied that the steps required by paragraph 5(1) are necessary to achieve the purpose of the notice. The same applies to the standard requirement at paragraph 5(2) of the notice, which is necessary to ensure that the land is restored to its condition before the breach took place. It follows that the requirements of the notice are not excessive and that the appeal on ground (f) must fail.
12. I do have some sympathy for the appellant in this respect. The breach of planning control alleged in the notice is clearly more expansive than he understood it would be from earlier discussions with the Council Officer. However, informal advice given by Council Officers is not binding on the Council itself and an appeal on ground (f) cannot succeed on the basis that the requirements of the notice exceed those indicated by a Council Officer in informal discussion prior to the notice being issued.
13. Furthermore, it was open to the appellant to appeal on ground (b) as set out in section 174(2) of the 1990 Act namely that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. It was also open to the appellant to appeal on ground (c) namely that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. The appellant did not avail himself of these opportunities, and thereby tacitly accepted the breach of planning control alleged in the notice.

Formal Decision

14. For the reasons given above, I conclude that the appeals should not succeed. The appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR