



Appeal Decision

Site visit made on 29 April 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2025

Appeal Ref: APP/A5270/C/23/3322061

Sundarban, 4-5 The Parade, Sudbury Heights Avenue, Greenford UB6 0LZ

- 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 Mr Abdur Rouff of Sundarban Tandoori Restaurant against an enforcement notice issued by the London Borough of Ealing.
 - The enforcement notice was issued on 12 April 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a shed on the flat roof of a single storey rear extension ('the Unauthorised Development').
 - The requirements of the notice are to:
 1. Remove the shed in its entirety.
 - The period for compliance with the requirements is within one month from the date this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Formal decision

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

Application for Costs

2. An application for an award of costs was made by the London Borough of Ealing against Mr Abdur Rouff. This application is the subject of a separate decision.

Background

3. No 4, The Parade is a three-storey building within a retail parade. The ground floor is in use as a restaurant with residential accommodation on the upper floors. The property, in common with others along The Parade, has a single-storey rear extension and, on its flat roof, a metal shed-like structure, of significant size, has been erected. It is understood that it is used for storage purposes in connection with the restaurant use and is accessed from a ladder through the ceiling via a hole in the shed's base.
4. A complaint from an interested party was received by the Council on 11 December 2019. This claimed that the shed's construction commenced on 9 November 2019. Following site visits being undertaken the Council saw it expedient to issue an enforcement notice requiring for the shed's removal.

The Appeal on ground (d)

5. An appeal on this ground accepts that the alleged breach has occurred, but requires that the appellant successfully demonstrates, on the balance of

- probability, that the breach of control, involving unauthorised operational development, took place a particular period of time before the date of the enforcement notice being issued.
6. Given that the notice was issued prior to 25 April 2024, when the relevant provisions of the Levelling up and Regeneration Act 2023 came into effect, it must be proved that the structure targeted was in situ on or before 12 April 2019 ie four years prior to the date of the enforcement notice's issue, and had remained in place throughout.
 7. Importantly, once an enforcement notice has been issued the clock effectively stops and the time that subsequent elapses does not count towards potential immunity from planning control. Where immunity is claimed the decision is reached, not on planning merit and/or impact, but instead on evidential fact, relevant legislation and, where applicable, case law.
 8. The onus is on the appellant to provide compelling evidence to support his case. In this instance, the appellant has provided very little evidence save for the copy of a receipt dated 8 October – the exact year is unclear from the copy - but the appellant claims it to be 2017. If so, on the face of it, there is an indication that £1,250 was paid to a contractor for the supply and installation of a shed at 4/5, The Parade, Sudbury. In addition, the appellant has claimed, on the appeal form, that a shed was erected on the flat roof of a single storey rear extension in mid 2017.
 9. However, the above information is directly at odds with the aerial photographic evidence provided by the Council which includes a series of images taken on dates between 8 April 2017 to 24 March 2020. It is clearly discernible from these that, although the shed was in situ by the latter date, it was not in evidence on 29 June 2019.
 10. Whilst I have had regard to the appellant's representations, the evidence supplied in support of the appeal is not compelling and, given the aerial photographs and also the timing of the complaint made to the Council as to the sheds erection, I am not convinced that the receipt, with its indecipherable date, is a bona fide document to support the appeal, and the requisite four year immunity bar has not been demonstrated.
 11. In the absence of precise and unambiguous evidence before me to prove otherwise I have concluded that the shed had not been in situ on 12 April 2019 and, accordingly, the four year immunity bar had not been met
 12. The appeal on ground (d) does not, therefore, succeed.

Timothy C King

INSPECTOR