
Appeal Decision

Site Inspection on 7 December 2018

by Graham Self MA MSc FRTPI

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

Decision date: 13 March 2019

Appeal Reference: APP/Q1445/C/18/3198144

Site at: 33-34 Gloucester Road, Brighton BN1 4AQ

- The appeal is made by Mr Keith Shearing under Section 174 of the Town and Country Planning Act 1990 as amended, against an enforcement notice issued by Brighton and Hove City Council.
- The Council's reference is ENF2017/00228.
- The notice is dated 14 February 2018.
- The breach of planning control alleged in the notice is: "Without planning permission the erection of a plastic roof canopy to the rear of the building on the Land".
- The requirements of the notice are: "Remove the plastic roofing and all associated structures from the rear of the property".
- The period for compliance is eight weeks.
- The appeal was made on grounds (c) and (f) as set out in Section 174(2) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation as set out in the Formal Decision.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 11 January 2019

Ground (c)

1. Under this ground of appeal it is claimed that the matters alleged in the enforcement notice do not constitute a breach of planning control. The onus is on the appellant to make out a case on the balance of probability.
2. The appellant contends that no development has occurred, taking into account that the canopy has no permanent foundation, does not offer full enclosure and is not attached to existing buildings, that the sheet roof is only fixed to the scaffold superstructure with cable ties, and that the scaffolding and clamps can be removed at any time. In the appellant's submission, there has not been any intention to form a permanent structure.
3. Whether a structure can be considered a building has to be determined with regard to three primary factors: size; degree of permanence; and physical attachment. No one factor is decisive. The structure enforced against is quite substantial in size, covering an area of about 70 square metres. The roof

comprises several plastic sheets. Given the size and composition of the structure, it was clearly built on the site (as opposed to being brought on to the site).

4. The use of cable ties, clamps and screws as part of the structure does not mean that it is temporary. It provides shelter for a large quantity of miscellaneous second-hand items including furniture, clothing, books, electrical goods including lamps and many other items which appear to be the stock-in-trade of the retail premises known as "Diplock's Yard". The structure had apparently been on the site for about 17 months by the time of my inspection. There is no suggestion that it has been removed and replaced at any time and it has caused a physical change of some permanence to the land and the way it is used.
5. Taking into account the points above about its size, the way it was built, its use and effect on the character of the land and its degree of permanence, I find that the operations to construct the canopy amounted to development for which planning permission was required. The assertion that the appellant does not intend to keep the canopy in place for longer than three years does not alter that finding. The appellant has not shown that the erection of the canopy did not involve development.
6. The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ("GPDO") grants planning permission for certain types of extensions or alterations to non-domestic premises such as shops; but these provisions do not apply to the development enforced against for several reasons, including the fact that the site is in a designated conservation area, the size of the structure (which covers a larger area than the 50 square metre limit applicable in conservation areas) and its position closer to the property boundary than 2 metres. All these factors exclude the development from being permitted under Article 3 and Schedule 2, Part 7, Class A of the GPDO, and permission is not granted by any other part of the GPDO. No express planning permission was obtained for this development.
7. The appellant, through his agent, has disputed the council's comments about the height of the structure. I established during my inspection that the structure is less than 4 metres high; but that is irrelevant.
8. In summary, the erection of the canopy as alleged in the enforcement notice constituted a breach of planning control. Therefore ground (c) of the appeal fails.

Ground (f)

9. Under this ground it is argued that the requirement stated in the enforcement notice is excessive to remedy the breach of planning control or injury to amenity. Since the notice alleges the erection of a canopy and requires that the canopy be removed, it follows that the purpose of the notice is to remedy the breach. For that reason, and since the appellant has not made an appeal on ground (a) in order to seek planning permission, I cannot consider questions of amenity or the merits of the canopy under ground (f).
10. The appellant contends that the disputed structure could be modified so that it would be permitted development under the GPDO. However, no specific details have been put forward as to how the appellant would propose to modify the unauthorised structure, or how any such change could result in the development being permitted. Put simply, the erection of the disputed structure enforced was unauthorised; there has been a breach of planning control; the requirement for removal does not go beyond what is necessary to remedy the breach.

11. The appellant also contends that the enforcement notice is "woefully vague and sufficient to render it a nullity", particularly with regard to the requirement to remove "all associated structures". I disagree. The wording of the notice and the photographs included with it show plainly that the appellant is simply required to remove what is "associated" with the canopy, meaning the scaffolding poles, green sheeting and all attachments, ties or clamps which hold the structure together, to which the appellant himself refers to in relation to ground (c). The term "associated structures" is not so imprecise as to render the enforcement notice a nullity or defective on its face. Nevertheless, since the council has provided a list "to be explicit" of what is to be removed, I shall vary the notice to make the requirements more precise. I have powers under Section 176 of the 1990 Act to do so, and I am satisfied that this would not cause injustice to any party.
12. The appellant has criticised the requirement for removal "from the rear of the property", but that is where the canopy is located and this is an appropriate remedy for the breach of planning control.
13. I conclude that the appeal on ground (f) only succeeds to the extent I have described, and does not result in the enforcement notice being quashed.

Other Matters

14. In his statements the appellant contends that the development has little impact on the amenity of neighbours. Some nearby residents have also submitted representations, objecting to and supporting the development. These points do not affect my decision - the effect of the development on local amenity would only have been relevant if I had been considering an application for planning permission; there is no such application before me.
15. The appellant says that the planning authority carelessly made mistakes in the enforcement process and in the notice. An example is that Section 4 of the enforcement notice (stating the reasons for issue) refers mistakenly to "demolition" instead of "development". Some of the council's actions during the enforcement process were flawed, but none of the flaws make the notice null or otherwise justify allowing this appeal.
16. I am also aware of the appellant's criticisms about the council's handling of a planning application (reference BH2017/0371). I make no comment on this matter as the application is not within my jurisdiction.

Formal Decision

17. I direct that the enforcement notice be varied by deleting the text of subparagraph 5(i) in its entirety and substituting:

"Remove the plastic roofing and all components of its supporting structure (including scaffolding poles, green sheeting and all attachments, ties or clamps which hold the structure together) from the rear of the property".
18. Subject to the above variation, I dismiss the appeal and uphold the enforcement notice as varied.

G F Self

Inspector

