



Appeal Decision

Site visit made on 20 November 2012

by B.S.Rogers BA(Hons), DipTP, MRTPI

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

Decision date: 3 December 2012

Appeal Ref: APP/T5720/C/12/2175587

Red Brick Oven, 444 Durnsford Road, London, SW19 8DZ

- 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 Mayank H.Patel against an enforcement notice issued by the Council of the London Borough of Merton.
 - The Council's reference is: 42051.
 - The notice was issued on 28 March 2012.
 - The breach of planning control as alleged in the notice is without planning permission, the erection on the land of a timber structure with a polycarbonate roof over existing (front) forecourt decking seated area.
 - The requirements of the notice are: (a) completely and permanently remove the timber structure with polycarbonate roof, over the existing front forecourt decking seated area; and (b) remove from the land all debris and waste resulting from compliance with (a) above and lawfully dispose of the same.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
 - Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision

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

The appeal on ground (d)

2. The appeal was initially on ground (c) only but the appellant has now confirmed that it should more properly be considered under ground (d). To succeed on this ground, the onus is upon the appellant to demonstrate, on the balance of probabilities, that the operational development which is the subject of the notice was substantially completed more than 4 years before the date of the notice i.e. on or before 28 March 2008.
3. The appellant states that the structure has been in place since 19 February 2008. In support of this, he encloses a number of invoices from Merton Timber, dated between 15 and 27 February 2008, an invoice from Cobbs Development Ltd, dated 20 February 2008 and 2 identical letters, dated 4 May 2012, each signed by 3 persons with local addresses.
4. In response to a complaint, the Council's Enforcement Officer states that he visited the site on 9 April 2008 and observed that a timber structure with polycarbonate roof was under construction and nearing completion; two builders/carpenters were working on site, attaching the side walls. This is

entirely consistent with the information given in the appellant's own planning application to retain the structure (LPA Ref: 08/P1313) dated 6 May 2008. In answer to a question in part 3 of the application form, asking the date when the building work or change of use was completed, the answer given was "10/4/08".

5. The Merton Timber invoices do not appear to relate to the type of building materials used in the structure in question and contain no indication that the materials were supplied to the appellant. Indeed one shows 450 Durnsford Road as the delivery address. To my mind, the invoices do not support the appellant's case.
6. The appellant has not challenged the Council's statement that a check with Companies House showed that Cobbs Development Ltd did not exist prior to 10 March 2011. Therefore I can place little reliance on the accuracy of the invoice dated 20 February 2008, under that company's letter heading, for the fitting of a polycarbonate roof.
7. There is no indication in the 2 identical letters of 4 May 2012 as to how the signatories (some of whose names are unclear) can recollect with any accuracy the date of completion of the structure, over 4 years earlier. Moreover, it is not known whether the signatories have any connection with the appellant. Consequently, I am unable to attach significant weight to these letters.
8. On the balance of probability, the evidence leads me to conclude that the development in question was not substantially complete on or before 28 March 2008. It was not, at that time, immune from enforcement action and the appeal on ground (d) therefore fails.

B.S. Rogers

Inspector