



Appeal Decision

Site visit made on 24 May 2018

by **Andrew Dale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 June 2018

Appeal Ref: APP/X5210/C/17/3181344

Land at 29 Tottenham Street, London W1T 4RP

- 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 Gianni Palermo against an enforcement notice issued by the Council of the London Borough of Camden.
 - The enforcement notice was issued on 27 June 2017 under ref. EN17/0082.
 - The breach of planning control as alleged in the notice is: "**Without planning permission:** Erection of a corrugated iron roof at rear upper ground/first floor level".
 - The requirements of the notice are set out as follows:
 - "1. Remove the corrugated iron roof at the rear upper ground/first floor level; and
 - 2. Make good the recessed area after this element has been removed."
 - The period for compliance with these requirements is two months.
 - The appeal is proceeding on the ground set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by deleting the word "*iron*" where that word appears within paragraph 3 and paragraph 5 (requirement 1).
2. Subject to those corrections, the appeal is dismissed and the enforcement notice is upheld.

Background, the enforcement notice and matters of clarification

3. The green-coloured corrugated roof, the sole matter identified in the enforcement notice as constituting the alleged breach of planning control, has been fitted into a recessed area between the tall rear-projecting wings of the terraced buildings at 29 and 31 Tottenham Street.
4. The appeal property at no. 29 has a vacant restaurant on the ground floor and flats on the floors above. The appellant describes his address on the appeal form as "*Flat 2nd and 3rd Floor*". The property is situated within the Charlotte Street Conservation Area.
5. Upon close inspection, I saw that iron is unlikely to have been used in the construction of the corrugated roof. At my site visit, the Council and the appellant, who is most likely to be in the best position to know what materials have been used, agreed that the corrugated roofing material is

probably a proprietary brand of pre-coloured bitumen roll or reinforced felt. The corrugated roof is screwed into the wooden joists below. There are two metal straps fixed across the top of the roof to provide additional support.

6. The roofing material does not need to be specified in the enforcement notice. It would be sufficiently clear if the word "*iron*" was omitted from the notice to leave the alleged breach of planning control as being the erection of a corrugated roof which has clearly occurred as a matter of fact. I can correct the enforcement notice accordingly without causing any injustice to the parties.
7. When the appeal was made, ground (d) only was pleaded – that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matter stated in the notice. By email letter dated 14 February 2018, the appellant, who is not represented, said the ground of appeal should be changed to ground (c) – that there has not been a breach of planning control.
8. Had the appeal on ground (d) persisted, it could not have succeeded because photographic evidence shows that the green-coloured corrugated roof was not in place on 12 July 2013. Thus, when the enforcement notice was issued on 27 June 2017, it was not too late to take enforcement action in respect of the green-coloured corrugated roof, following the relevant four-year time limit for enforcement action against operational development laid down in section 171B of the 1990 Act as amended.
9. As the appellant has not made an appeal on ground (a), there is no deemed planning application before me and I cannot consider the planning merits of the corrugated roof.

The appeal on ground (c)

10. In order to succeed on ground (c), the onus is on the appellant to prove on the balance of probability that the matter alleged in the enforcement notice does not constitute a breach of planning control.
11. I am unable to identify anything in the appellant's submissions that expressly supports the appeal on this ground.
12. In the appellant's email letter of 14 February 2018, he said "*... a planning officer came to visit the roof trellis when it was constructed who took photographs and confirmed to me that no planning application was needed.*" This evidence does not relate to the corrugated roof as such.
13. As far as the appeal on this ground is concerned, the burden of proof that rests on the appellant has not been discharged.
14. The erection of the corrugated roof comprised a building operation. It has also materially affected the external appearance of the building as seen from various private vantage points within the conservation area. It is development within the meaning of section 55 of the 1990 Act as amended for which section 57 indicates planning permission is required. This has not

been obtained from the local planning authority and there is no suggestion from any party that planning permission would have been available through the operation of any development order.

15. A breach of planning control has occurred and the appeal on ground (c) therefore fails.

Andrew Dale

INSPECTOR