
Appeal Decisions

Site visit made on 9th December 2013

by Clive Whitehouse BA(Hons) MCD MRTPI

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

Decision date: 13 December 2013

Appeal A: APP/R5510/C/13/2197483

Adhya Shakyti Mataji Temple, 55 Waterside Estate, High Street, Cowley, Middlesex, UB8 2DX

- 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 Jaswant Maicha against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The notice was issued on 2nd April 2013.
 - The breach of planning control as alleged in the notice is the unauthorised stationing of a portacabin-type structure to the front of the building.
 - The requirements of the notice are: (i) Remove the portacabin-type structure from the land. (ii) Remove from the land all debris, items, fixtures and fittings, building materials, plant and machinery resulting from compliance with point (i), above.
 - The period for compliance with the requirements is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/R5510/C/13/2197701

Adhya Shakyti Mataji Temple, 55 Waterside Estate, High Street, Cowley, Middlesex, UB8 2DX

- 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 Jaswant Maicha against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The notice was issued on 2nd April 2013.
 - The breach of planning control as alleged in the notice is: the unauthorised erection of a single-storey extension canopy to the front of the building.
 - The requirements of the notice are: (i) Demolish the extension. (ii) Remove from the land all debris, items, fixtures and fittings, building materials, plant and machinery resulting from compliance with point (i), above.
 - The period for compliance with the requirements is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A – The Portacabin

1. The appeal is allowed and the enforcement notice is quashed.

Appeal B – The Canopy

2. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a single-storey extension canopy to the front of the building on land at Adhya Shakyti Mataji Temple, 55 Waterside Estate, High Street, Cowley referred to in the notice, subject to the following condition:
 - 1) The canopy hereby permitted shall be removed and the land restored to its former condition not later than two years from the date of this decision.

Background

3. The temple occupies a single-storey brick building which has an authorised Class D1 use for public worship. A large portacabin was placed on the forecourt in January 2008, and was then said to be required as a builder's store in connection with a proposed rear extension. An extension was later permitted but did not progress, and in January 2009 the Council issued an enforcement notice alleging the unauthorised "change of use of the land for stationing of a portacabin-type structure". Planning permission was subsequently granted on appeal for a temporary two-year period (Ref: APP/R5510/C/09/2097949).
4. The present enforcement notice is not framed to secure compliance with the condition requiring removal of the portacabin after the two-year period, but is drawn up on the basis of unauthorised operational development. The Council now considers, in effect, that the portacabin amounts to a structure or building, rather than a change of use of the land.
5. More recently, a canopy with a translucent polycarbonate roof on a wooden framework has been erected to form a covered area between the temple building and the portacabin.

Portacabin - Appeal on Ground (b)/(c)

6. It is contended for the appellant that the portacabin is not operational development and that the alleged breach of planning control cited in the current enforcement notice has not occurred. Although ground (c) has been ticked on the appeal form, this argument falls more properly under ground (b) – that the alleged breach has not occurred, as a matter of fact. The appellant points to the fact that the previous enforcement notice and appeal were considered on the basis of a material change of use of the land.
7. The portacabin has a kitchen area and is laid out with tables and chairs sufficient to seat about 30 people. It is used for the preparation of food for presentation to the deity and afterwards its consumption by temple followers.
8. Since the proposed rear extension never got off the ground, it seems unlikely that the portacabin was ever used as a builder's store/office, as originally claimed. On the evidence before me, I think it is very likely that the portacabin has always been used in connection with the religious and social activity of the temple. In that case, no material change of use has occurred (although that may have been less evident in 2009).

9. Case law has established that in deciding whether operational development has occurred, regard should be had to matters of size, degree of permanence and physical attachment. In the present case the portacabin is of a substantial size (approximately 15m x 4m). At the time of my inspection it had been in position for approaching 6 years, indicating a significant degree of permanence. It stands on a metal framework and is attached to the temple building for electricity, water supply and drainage. Having regard to the above considerations, I conclude as a matter of fact and degree that the portacabin amounts to a form of operational development, as alleged in the enforcement notice. The appeal on ground (b)/(c) fails.

Appeal on Ground (d)

10. The appeal on this ground is on the basis that, if the portacabin is found to be operational development, it was too late for the Council to take action against it when the enforcement notice was issued. Unauthorised operational development becomes immune from enforcement action after four years. An exception is where the "second bite" provisions in section 171B(4)(b) of the Act apply. That allows further enforcement notice to be taken within four years of an earlier notice, where both notices relate to the same breach of planning control. In the present case, more than 4 years elapsed between the issuing of the first and second notices; and the breaches of planning control alleged in those notices are significantly different. Therefore the "second bite" provisions do not apply.
11. There is no dispute that the portacabin has been in position since January 2008, more than four years before the second notice was issued in April 2013. The portacabin has therefore become lawful by the passage of time. The appeal succeeds on ground (d) and the enforcement notice will be quashed.
12. It is not necessary for me to consider the appeals in respect of the portacabin on grounds (a) and (g).

The Canopy – Appeal on Ground (a)

Effect on the Street Scene

13. The appeal on this ground is on the basis that planning permission should be granted for the canopy for a temporary period. I consider the main issue to be the effect of the canopy on the street scene.
14. The canopy covers an area in front of the temple where followers can leave shoes and outdoor clothing, and it provides covered access to the cooking and eating facilities in the portacabin. It also provides two covered parking spaces at times when the temple is not in full use.
15. Planning permission was granted in September 2012 for a permanent extension and shrine to the front of the temple building. Those works will require the removal of both the canopy and the portacabin. However, the appellant has found that raising the funds necessary to procure the building works is taking longer than originally expected. Pending commencement of work on a permanent extension, temporary permission for the canopy for 3 to 5 years is sought.
16. The materials and form of construction of the canopy are of a utilitarian nature, but it is set well back from the road frontage and stands between the

portacabin and a tall brick wall and outbuildings forming part of a bar/club to the north. For as long as the portacabin remains in place, the canopy will have very limited visibility in the street scene.

17. The Council's saved policies (adopted in 2012 as part of the Hillingdon Local Plan) include policies seeking high standards of design appropriate to the local context (BE13, BE15, R9 and OE1). Clearly, the design and materials of the canopy would not be acceptable on a permanent basis, and the appellant accepts that it is a temporary measure. I conclude on the main issue, having particular regard to the temporary nature and restricted visibility of the structure, that it would have no unacceptable effect on the street scene for a limited period.
18. I consider that the 3 to 5 year period sought by the appellant is excessive and would tend to undermine the resolve to proceed with the approved permanent front extension. Planning permission will be granted for a temporary, two-year period. That will allow the circumstances to be reviewed against the expected timescale for the permanent works.

Other Matters

19. The Council's reasons for issuing the notice include reference to a reduction in car parking space on the forecourt of the premises. The previous Inspector concluded in respect of the temporary permission for the portacabin that the small reduction in parking spaces would have no unacceptable effects in that area. Two cars can be parked beneath the canopy when religious services are not taking place. I conclude that the grant of temporary permission for the canopy has no unacceptable effects on car parking.
20. The appellant claims that the enforcement notices would interfere with the human rights of temple followers under Articles 8 and 14 of the European Convention on Human Rights. Reference is also made to the duty under the Equality Act 2010. Since the notices are to be quashed, my decisions do not interfere with those rights.
21. In the situation where temporary planning permission is granted, it is not necessary to consider the appeals on grounds (f) and (g).

C Whitehouse

INSPECTOR