

Appeal Decision Notice

T: 01324 696 400
F: 01324 696 444
E: dpea@scotland.gsi.gov.uk



Decision by Mike Croft, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-230-2081.
- Site address: land to the rear of and 32 metres south-west of 8 Bellevue Crescent and 50 metres west of Scotland Street Lane East, Edinburgh, EH3 6ND.
- Appeal by Mr D Ferrigan against the enforcement notice dated 14 November 2013 served by the City of Edinburgh Council.
- The alleged breach of planning control: the erection of a flat roofed structure with a footprint of 3.5 by 7.5 metres, finished in coloured render with a felt roof and with concrete copes, situated adjacent to the lane to the rear of Bellevue Crescent.
- Date of site visit by Reporter: 21 February 2014.

Date of appeal decision: 12 March 2014.

Decision

I dismiss the appeal and direct that the enforcement notice dated 14 November 2013 be upheld. Subject to any application to the Court of Session, the enforcement notice takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of section 131(3) of the Town and Country Planning (Scotland) Act 1997 (as amended).

Preliminary matters

1. The appellant's submissions contain numerous complaints about council officers' motives and actions in relation to his development at the appeal site. My concern is solely with the substance of the enforcement notice as served and those submissions that have been made which relate to the appeal against the notice. Any complaints that the appellant may have should be referred to the relevant authorities and are not matters for me. In addition, the matter of whether planning permission should be granted for the structure in question is not before me: this means that the references in the submissions (whether made by the council, by the appellant, or by others) to the impact of the structure on the appearance of the immediate locality or on neighbours' living conditions carry no weight in my assessment.



Reasoning

2. The appeal is made on two of the grounds in section 130(1) of the 1997 Act. I deal below with each of those grounds under separate headings.

The ground (c) appeal: that the matters stated in the notice do not constitute a breach of control

3. The appeal site has the benefit of a planning permission granted by the council in June 2012 (ref 12/01543/FUL) to “erect single domestic garage (to replace existing timber garage structure)”. The permission was subject to a single condition, requiring the submission and approval of details of the paint colour scheme within three months of the date of the permission or prior to work commencing on site, whichever was the sooner.

4. A structure has been erected on the site. The notice states that the structure that has been erected deviates from what was permitted in June 2012 in its height, it being rendered and painted dark grey, its failure to provide stone ingoes, its failure to install wood cladding above the door, its failure to install a roller garage door (that being replaced by a glass screen and single door), the laying down of an area of concrete in front of the glass screen, and a failure to provide a roof cupola (with a window in one of the walls being installed instead). In subsequent submissions, the council refers to the structure being marginally higher on its front elevation (3.4 metres) than as shown on the approved plan (3.27 metres), and the internal floor to ceiling height being 2.9 metres rather than 2.7 metres as approved. The council finds that the cumulative impact of these deviations renders the development unauthorised in its totality.

5. Before dealing with the appellant’s response to the council’s case, it is also pertinent to note that the structure in question has been partitioned internally and has a wooden parquet floor. In the room at the front (entered through the single door) are kitchen cupboards, a sink, an oven and a washing machine. A small room at the back has a shower, toilet and wash basin. A larger rear room (with the window mentioned above) had no fittings or furniture at the time of my inspection. I note also that in August 2013 the council refused an application for change of use of the structure to form residential studio flat accommodation (ref 13/01863/FUL). An appeal against that refusal was dismissed in December 2013 (ref PPA-230-2103).

6. The appellant argues that the structure in question is not complete. He gives that as a reason for having installed a glazed screen and single door in place of a roller garage door. He also says the glass screen has been set back to allow for fitting of a roller door if needed. However, I am not aware of any reasonable explanation for installing a glass screen and single door as part of the process of building a garage, simply because it bars the entry and exit of vehicles. Such a screen and door are not provided for by the approved plan.

7. It is clear to me that the building has been completed. The appellant’s intentions have been made very evident from the internal partitioning of the structure, the fittings added to it, the change of use application and the subsequent appeal, as described in

paragraph 5 above. In addition, I find the council's itemisation of deviations from the approved plans (see paragraph 4 above) to be correct, subject to my measurement of the internal floor-to-ceiling height being 2.67 metres, only marginally different from the 2.7 metres as approved. At one point in his submissions the appellant claims that the building "is built per approved plans". As a plain matter of fact, that is not so. I am satisfied that what has been built is not what has been permitted.

8. It is for the appellant in a ground (c) appeal to demonstrate, on the balance of probability, that no breach of control has occurred. I have already referred to the main points the appellant raises which are relevant to his ground (c) appeal. His other remarks, including the possibility of inserting obscure glazing to the structure's window, do not assist him with regard to the matter of whether a breach of control has occurred. The balance of the evidence clearly shows that there has been a breach of planning control, and so the ground (c) appeal fails.

The ground (f) appeal: that the steps required by the notice exceed what is necessary to remedy the breach of control or any injury to amenity caused by the breach.

9. The enforcement notice contains a single requirement, and that is to remove the unauthorised structure. The appellant says that demolition greatly exceeds what is necessary to remedy the breach.

10. One difficulty with the appellant's position is that he does not specify what alternative requirement should be substituted for the requirement specified by the notice. I have considered an alternative requirement in the form of requiring the implementation of permission ref 12/01543/FUL. But I have decided against that. The building, including the internal arrangements, is substantially different from that for which planning permission was granted. It would be impracticable to specify all the steps necessary to render the building compliant with the terms of that permission. In these circumstances I consider that it would be wrong to try to vary the terms of the enforcement notice in this way.

11. I therefore see no proper basis for varying the notice's requirements and so, having taken account of all the other points raised by the appellant, the ground (f) appeal fails.

Mike Croft

Reporter