
Appeal Decision

Site visit made on 17 October 2016

by K R Saward Solicitor

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

Decision date: 21 October 2016

Appeal Ref: APP/Z5060/C/16/3154928

25 Muggeridge Road, Dagenham, Essex RM10 7BG

- 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 Ms Alina Radoescu against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 22 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission, erection of automatic gates and railings to front and side of front garden.
 - The requirements of the notice are:-
 - Remove the automatic gates and railings to front and side of front garden
 - Remove all alterations and fixtures related to the unauthorised automatic gates and railings to front and side of front garden
 - Remove all subsequent waste material from the property.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
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Decision

1. The enforcement notice is quashed.

Matters relating to the enforcement notice

2. Notwithstanding the concern expressed in the Council officer's delegated report¹ regarding the 1.9m high brick pillars topped with ball finials and the supporting walls, this enforcement notice attacks only the metal railings and gates. The ground (a) appeal is derived from the allegation and relates solely to that part of the development. As the allegation and requirements match, it is not a matter for me whether the notice was drafted in this way intentionally.
3. Whilst the allegation and requirements are sufficiently clear for the appellant to know what she has done wrong in breach of planning control and how it must be remedied, it is unclear from the notice why those steps must be taken. Specifically, it is unclear what is meant in the reasons by "the intensive use of the property" when the breach of control has been identified as operational development in the form of erection of railings and gates. It is also unclear how such "intensive use" will result in a "negative impact on present and future

¹ In relation to retrospective planning application reference 15/01006/FUL for the erection of the automatic gates and railings.

occupants and their neighbours". It is essential that an enforcement notice is neither ambiguous nor uncertain.

4. Two development plan policies are cited in the reasons; Policies BP8 and BP11 of the Borough Wide Development Policies DPD, March 2011. Both policies address "residential amenity" as well as protection of the character of the area. As such, they do not clarify how harm arises in this case either in relation to the intensity of use or the impact upon occupants and neighbours.
5. Although the delegated report which discusses the retrospective planning application indicates the Council considers the gates and railings to have an adverse effect on the street scene, it cannot be assumed that the notice was issued for the same reason. Indeed, the notice suggests that there is another reason concerning the intensity of use and possibly living conditions. It is the notice itself which must give reasons why the Council considers it expedient to issue the notice. That is a requirement imposed by section 173(10) of the Act and in Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002. It cannot be corrected by the subsequent production of details.
6. The notice should contain sufficient detail to enable any person on whom a copy of it is served to know from the outset why it has been issued. In determining an appeal there is provision to correct any defect, error or misdescription in the enforcement notice, but only where no injustice would arise (section 176(1)). In this instance, it is not possible to identify with any certainty with what harm the Council is concerned. Furthermore, I consider the test will not be satisfied as correction of the notice would introduce reasons on which the appellant has not had opportunity to comment.

Conclusion

7. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the reasons for issue of the notice. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under ground (a) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended does not fall to be considered.

KR Seward

INSPECTOR