The Planning Inspectorate

Appeal Decision

Site visit made on 8 November 2016

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 05 December 2016

Appeal Ref: APP/T5150/C/16/3155910
66 Walm Lane, London NW2 4RA

- 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 Sevvet Bahceci against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 27 July 2016.
- The breaches of planning control as alleged in the notice are:
  1. Without planning permission, the erection of a covered storage area to the rear of the premises.
  2. Without planning permission, the siting of a walk in fridge/freezer in the rear garden of the premises.
  3. Breach of conditions 3, 4, 5, 6, 7 and 8 of planning permission ref.10/2022 dated 15 October 2010.
- The requirements of the notice are:
  Step 1. Demolish the unauthorised covered storage area to the rear of the premises.
  Step 2. Permanently remove the walk in fridge/freezer located in the rear garden of the premises.
  Step 3. Demolish the single storey rear infill extension, new extraction flue and air conditioning units to the rear of the premises until such time that conditions 3, 4, 5, 6, 7 and 8 of planning permission Ref 10/2022 have been complied with.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The enforcement notice is quashed.

Reasons

The address of the land affected

2. The address of the property affected by the alleged breaches of planning control is stated as being No 66 Walm Lane. This is identified by a bold black line on the Ordnance Survey extract plan accompanying the notice. However, it is clear from the Council's photographs that the walk in, fridge/freezer, referred to in the notice, was sited to the rear of No 64 Walm Lane, not No 66. This property is also owned by the appellant and has been used to extend his restaurant business. This error by the Council could be grounds for finding that the notice is invalid. I consider, though, that the appellant has not been misled by the omission of a reference to No 64. This is because at the site visit I saw that the appellant has removed the fridge/freezer as well as the covered

storage area mentioned in the notice. I find that neither party would be prejudiced if the address was corrected in the notice.

The allegation

3. The notice attacks three areas of concern to the Council which are the erection of a covered storage area, the siting of a fridge/freezer and the breach of a number of conditions attached to a grant of planning permission given in 2010.

4. An enforcement notice must enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control and what steps the Council require to be taken to remedy the breach. Whilst the first two allegations are clearly expressed, I consider the third is not set out sufficiently clearly so that the recipient is in no doubt as to the breach of control. This is because the breach of planning control stated does not provide a number of fundamental details as required by section 173 of the 1990 Act.

5. In the first instance the notice does not preface the description of the allegation with 'failure to comply with any condition' (or conditions) as set out in s171A(b) although the first two allegations reference 'without planning permission' from s171A(a). The notice also does not tell the recipient anything about either the planning permission that was granted by the Council in 2010 or the content of the conditions allegedly breached. Furthermore, it does not elaborate in what way each of the conditions has been breached. There is a difference between conditions No 3 and 4 and conditions No 5 – 8. The former contain on-going obligations to ensure an external door is 'maintained' as self-closing and that staff should not use the rear garden for meetings or recreation. The latter conditions require the submission and approval of details for the fume extraction and odour control equipment, a post-installation acoustic assessment, external materials and the arrangements for storage and disposal of waste.

6. To change the third allegation in a way that would reflect my observations would significantly alter the notice and the appellant has not had an opportunity in these proceedings to respond to that change by, for example, appealing on one of the other grounds available within s174. The appellant would therefore suffer injustice.

The requirements

7. With regard to the steps required to be taken, I find that these are also inadequately expressed. This is because the Council has not specified what the recipient needs to do to comply with each of the listed conditions. For those conditions with an on-going obligation, the Council has not clearly stated the activities that need to cease. For those conditions that require the submission of details, the Council has not clearly stated the information they require to discharge the conditions.

8. I consider the outcome of the requirements as currently drafted in the notice has led to confusion by the appellant as it was difficult for him to know what he had to do. This can be seen in his ground (c) appeal. This ground of appeal is that the matters alleged in the notice do not constitute a breach of control. However, the facts submitted by the appellant make no mention of the first two allegations and in respect of the third, the appellant states he submitted all the information requested with his planning application. In other words, he is

stating that he has already complied with the conditions. This is an appeal under ground (b) which is that, as a matter of fact, there is no breach of planning control. This ground was not pleaded.

9. The appellant also seems to be unaware of the on-going obligations of conditions No 3 and 4 and makes no direct mention of them in his appeal. I consider varying the notice to set out the precise steps needed for each condition, whilst this would be much clearer for the appellant, would be more onerous to him and would cause him injustice.

Conclusion

10. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance and the land where the breach of planning control is alleged to have taken place. The latter could be corrected without causing injustice. However, it is not open to me to correct the other errors 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 thus invalid for the reasons stated and will be quashed. In these circumstances the appeal under grounds (c), (f) and (g) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

D Fleming

INSPECTOR