
Appeal Decision

Site visit made on 12 December 2016

by K R Saward Solicitor

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

Decision date: 20 December 2016

Appeal Ref: APP/B0230/C/16/3153655

198 Beechwood Road, Luton, Bedfordshire LU4 9SA

- 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 Nafeena Beg against an enforcement notice issued by Luton Council.
- The enforcement notice was issued on 16 May 2016.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the Land from use as a single residential unit to a use as two separate residential units as a result of the separate and self contained residential use of the outbuilding on the Land shown in the approximate position edged and hatched green on the plan attached to the notice ("the Outbuilding").
- The requirements of the notice are:-
 - (i) Cease the residential use of the Outbuilding.
 - (ii) Remove all domestic appliances, furniture and chattels from the Outbuilding including but not limited to all bedroom furniture and kitchen and bathroom facilities to include the following items:- kitchen wall and base units, kitchen sink, kitchen worktop surfaces, cooking facilities and bathroom cupboards, shower/bathing facilities, W/C, wash basin and pedestal and all water and gas supply piping and all waste connections.
 - (iii) Remove all resultant debris and materials arising from compliance with step (ii) above from the Land.
- 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),(b),(c),(e),(f) & (g) 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.

Summary of Decision: The notice is found to be a nullity.

Procedural Matters

1. Originally, the appeal was brought on grounds (a),(f) and (g) only. During the course of the appeal, grounds (b),(c) and (e) were added and the Council was afforded opportunity to comment. Ground (e) concerns whether a copy of the enforcement notice was properly served as required by section 172(2) of the 1990 Act. However, the appellant's arguments brought under this ground do not concern service of the notice, but whether the officer who signed the notice had authority to do so. This raises issues over the validity of the notice rather than arguments pertaining to ground (e) and I shall deal with it accordingly.

Matters relating to the Notice

2. The enforcement notice is signed by the Council's Principal Solicitor. The appellant has provided an extract of the Council's Constitution. Part 7 thereof
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contains the Scheme of Delegation to Officers for non-executive functions. The issue date is 24 November 2015. I take this to be up-to-date as the Council has not suggested otherwise.

3. There is a general scheme of delegation to Directors and the Chief Executive and a specific scheme of delegation authorising particular post-holders to undertake specific functions. 'Principal Solicitors' are given specific delegated authority to prosecute for offences and to authorise any officer of the Council to appear in Court. The delegation is limited to those functions. It is the Development Control Manager who is given specific delegated authority "to issue and serve enforcement notices".
4. In answer to the appellant's submission that the notice was issued without the appropriate authority, the Council responded that "the Authority does not find that there has been a breach of its scheme of delegation". It has not elaborated upon why it considers that to be the case. Nor has the Council referred me to any part of its Constitution or produced any other form of authority under which the Principal Solicitor could have acted.
5. From the information before me, it was the Council's Development Control Manager who had authority to issue the notice and not the Principal Solicitor. In the absence of any form of clarification or evidence to indicate otherwise, I can only conclude that, on the balance of probabilities, the notice was issued by the Principal Solicitor without the requisite authority and was thus *ultra vires*. That being so, the notice is a nullity in the same way that a notice was found to be a nullity for lack of proper authority in the appeal decisions¹ for 'Kendals Cottage' to which the appellant has drawn my attention.
6. I have concluded that the notice is a nullity and in these circumstances the appeal under the various grounds set out in section 174(2) to 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 do not fall to be considered. Nothing in this decision prevents the Council from exercising its power to re-issue the notice under section 171B(4)(b) of the 1990 Act, if it considers it expedient to do so.

Formal Decision

7. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.

KR Seward

INSPECTOR

¹ Appeal Refs: APP/N1920/C/15/3005612 & 3005613 dated 10 November 2015