
Appeal Decision

Site visit made on 5 December 2016

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 4 January 2017

Appeal Ref: APP/X1925/C/16/3153022

The Rose Gardens, Cambridge Road, Hitchin SG4 0JX

- The appeal is made by Robert Shala under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 15/00053/1ENF) issued by North Hertfordshire District Council on 26 May 2016.
 - The breach of planning control alleged in the notice is as follows: -
 - “Without planning permission, the installation of canopies, cabins for customer waiting/office/rest room/secure storage and screen fences to facilitate continued use of the yard as a car wash”.
 - The requirements of the notice are as follows: -
 - “(i) Cease the use of the area edged red on the attached location plan for the purposes of car washing.
 - (ii) Permanently remove all the portable buildings and structures edged blue on the attached location plan from the area edged red.”
 - The period for compliance with these requirements is two months.
 - The appeal was brought on the grounds set out in section 174(2)(c) and (f).
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Decision

1. No further action is being taken.

Reasons for the decision

2. An enforcement notice must tell its recipients fairly what they are alleged to have done in breach of planning control and what steps they are required to take to remedy the breach or any injury to amenity caused by it. The steps required by the notice should match the matters alleged to be the breach of planning control unless under-enforcement is intended.
 3. This enforcement notice is defective for the following reasons: -
 - There is a requirement to “Cease the use of the area edged red on the attached location plan for the purposes of car washing”, but there is no allegation that the car wash use is a breach of planning control. It cannot be implied from the words in the allegation “to facilitate continued use of the yard as a car wash”, since an allegation should be clear and explicit. Furthermore, these words could have been added to describe the authorised use of the yard. The area referred to in the requirement is also far larger than the yard and the notice does not explain why.
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- The allegation refers to “the installation of canopies, cabins for customer waiting/office/rest room/secure storage and screen fences”. It is not clear from the notice what these items are, since the description of them is imprecise and their positions on a plan are not specified in the allegation. It is also not clear from the notice which of them are alleged to be uses of land and which of them are alleged to be operational development.
 - The wording of the requirement to “Permanently remove all the portable buildings and structures edged blue on the attached location plan from the area edged red” does not match the words used in the allegation, “the installation of canopies, cabins for customer waiting/office/rest room/secure storage and screen fences”. It is not clear from the notice which of the items referred to in the requirement are the same as those referred to in the allegation (which is itself unclear, for the reasons given at the second bullet point above) or whether any under-enforcement is intended.
4. For the above reasons, I consider that the notice does not tell the appellant fairly and with reasonable certainty what he is alleged to have done in breach of planning control or what steps he would have to take to remedy the breach. In these respects, I find that the notice does not comply with the mandatory requirements of subsections (2) and (3) of section 173 of the Town and Country Planning Act 1990 and is therefore a nullity. As a result, there is no notice capable of correction or variation and no appeal to be determined. Grounds (c) and (f) do not fall to be considered and I can take no further action. The Council are requested to ensure that any record of the notice is removed from the register kept under section 188.

D.A.Hainsworth

INSPECTOR