

Appeal Decision

Site visit made on 12 January 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 24 January 2017

Appeal Ref: APP/W5780/C/16/3151954
618 Green Lane, Ilford IG3 9SE

- 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 Delta Home Improvements Ltd against an enforcement notice issued by the Council of the London Borough of Redbridge.
 - The enforcement notice was issued on 27 April 2016 under ref. E0982/14.
 - The breach of planning control as alleged in the notice is: "Without planning permission; a) the erection of a single storey rear extension."
 - The requirements of the notice are set out as follows:
 - "(i) Removal of the rear single storey rear extension (sic)
 - (ii) Remove from the land all resulting building materials, rubble and debris arising from compliance with (i) & (ii) (sic)".
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. Since the enforcement 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 1990 Act as amended.

Background and matters of clarification

2. The appeal concerns the ground floor of a three-storey building which the Council says is located within the Goodmayes Local Centre. The ground floor is set out as offices for Delta Home Improvements Ltd.
 3. The enforcement notice attacks a single-storey, ground floor extension that has been added at the rear of the appeal property in order to provide a kitchen, an office and a store for Delta Home Improvements Ltd.
 4. The breach of planning control alleged in the notice has clearly occurred and that is presumably why the appellant no longer wished to pursue an appeal on ground (b) in the letter dated 4th July 2016 confirming the grounds of appeal, after the original appeal form had been received on 7th June 2016.
 5. In the heading above, I highlight minor problems with the drafting of the requirements in the enforcement notice. However, for the reasons that follow, there is no enforcement notice capable of correction or variation.
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Reasons for the decision

6. The Council's reasons for issuing the enforcement notice are explained in the fourth part of the notice. I have not set them out in the heading above but in short, the three paragraphs in that part tell a reader that: the breach of planning control has occurred within the last four years; the development does not constitute permitted development; and planning permission should not be given "... because planning conditions could not overcome these objections to the development." Unfortunately for the Council, "these objections" are not set out in the enforcement notice.
7. Section 173 of the 1990 Act as amended covers the content of enforcement notices and identifies a number of matters that an enforcement notice shall state or specify. Subsection (10) of section 173 says that an enforcement notice shall specify such additional matters as may be prescribed. Those additional matters are found in regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (hereinafter "the Regulations 2002").
8. Regulation 4 (a) of the Regulations 2002 says that an enforcement notice shall specify the reasons why the local planning authority consider it expedient to issue the notice. Regulation 4 (b) requires the notice to specify all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice. These requirements are clearly set out in the example enforcement notice on operational development found within the Planning Practice Guidance.
9. It is vital that anyone served with a copy of an enforcement notice should be able to understand, from the outset, the reasons why the local planning authority issued the notice. Moreover, it is a prerequisite for taking enforcement action (see section 172(1) (b) of the 1990 Act as amended) that it should appear expedient to the local planning authority to issue the notice, having regard to the provisions of the development plan and to any other material considerations. I consider that this enforcement notice has no content that goes to the matter of expediency. This is compounded by the absence of relevant development plan policies in the enforcement notice.
10. This enforcement notice is missing vital elements that are required by statute to be included in the notice. The omission from the notice of the reasons why the local planning authority considered it expedient to issue the notice was presumably an oversight. It cannot however be corrected by the more comprehensive explanation subsequently provided in the Council's statement in response to this appeal, where relevant development plan policies are also quoted. Furthermore, the appellant could not have been expected to rely on interpretations of the planning history of the site which reveals that a single-storey rear extension at the appeal property was the subject of a failed planning application and a failed application for a lawful development certificate.
11. This enforcement notice does not meet the statutory requirements of section 173(10) of the 1990 Act as amended and regulation 4 of the Regulations 2002. Accordingly I find the notice to be defective on its face and therefore a nullity.

12. I have concluded that the notice is a nullity. In these circumstances the appeal under the grounds set out in section 174(2) (a), (c), (f) and (g) 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. I can take no further action in connection with this appeal.

Andrew Dale

INSPECTOR