

Appeal Decision

Site visit made on 24 April 2017

by K R Saward Solicitor

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

Decision date: 5 May 2017

Appeal Ref: APP/A1530/C/16/3164375

Building A, Jodi Cottage, Nightingale Farm, Nightingale Hill, Langham, Colchester, Essex CO4 5PN

- 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 The Wine Company (UK) Limited against an enforcement notice issued by Colchester Borough Council.
 - The enforcement notice was issued on 3 November 2016.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission the change of use of part of the existing building labelled "A" on the plan attached to the enforcement notice and associated yard for storage and distribution of wine (use class B8).
 - The requirements of the notice are:-
 1. Cease the use of "Building A" and the associated yard for storage and distribution of wine (use class B8).
 2. Remove all paraphernalia associated with the storage and distribution of wine (use class B8) from "Building A" and the surrounding land.
 - The period for compliance with the requirements is 9 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(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.
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Decision

1. The enforcement notice is quashed.

Matters relating to the notice

2. The notice attacks the use of one-half of a building for the storage and distribution of wine. Following the grant of permission on 2 December 1999 the authorised use of the building as a whole is for the storage of classic/veteran cars and furniture. Both the present and authorised uses fall within Class B8 (storage or distribution) of the Town and Country Planning (Use Classes) Order 1987, as amended.
 3. In the notice the Council alleges that there is a change of use of part of the building. The allegation is wrong because what the Council objects to is the appellant not complying with a condition imposed by the 1999 permission. The condition restricted the use of the building to the "long-term storage of classic/veteran cars and furniture" and for no other purpose whatsoever. The breach of planning control is therefore failing to comply with a condition to which planning permission has been granted under section 171A(1)(b) of the
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1990 Act. This cannot be ascertained from the way that the notice is framed. Indeed, the notice has been issued solely on the basis that development has been carried out without the required planning permission under section 171A(1)(a).

4. If I were to change the allegation, neither party will have had opportunity to submit their views on the enforceability and need of the condition which is breached. Furthermore, the appellants arguments may well have differed. It is plain that the notice is incapable of being corrected without injustice arising.
5. Had I gone on to consider the grounds of appeal, there are other errors with the notice that would have been capable of correction. The plan annexed to the notice would have required correction because it excludes the yard area next to 'Building A'. As the yard is mentioned in both the allegation and requirements, the appellant can have had no doubt that it was also the subject of the notice. Consequently, a corrected plan could have been substituted. In addition, there was no need for the notice to specify the precise date on which the five week compliance period would end. The date became inaccurate once the appeal was made. The notice was then suspended pending the outcome or withdrawal of the appeal. The end date given in brackets could have been deleted.

Conclusion

6. For the reasons given above I conclude that the enforcement notice does not specify correctly the alleged breach of planning control. 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 the various grounds 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 do not fall to be considered.

KR Seward

INSPECTOR