



Appeal Decision

Site visit made on 10 April 2018

by A A Phillips BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2018

Appeal Ref: APP/T5150/C/17/3181790

111 and 111A Denzil Road, London NW10 2XB

- 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 Stefan Duraj against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 24 July 2017.
- The breach of planning control as alleged in the notice is without planning permission the erection of a building in the rear garden of the premises.
- The requirements of the notice are:
STEP 1 Demolish the building in the rear garden of the premises.
STEP 2 Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (e) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: No further action is taken.

Preliminary

1. As a consequence of an administrative error the Council did not attend the site visit. However, I was able to view the site as an access required site visit. The Council had no objection to this approach.

Procedural Matter

2. Whilst there is no formal ground (e) appeal, the appellant's representations express confusion with respect to which building is the subject of the enforcement notice. I have gone back to parties to obtain their evidence on this matter, which has been taken into consideration. I will add the ground (e) to the appeal which can be considered without prejudice to the parties.

The Notice

3. In relation to the appellant's case made with respect to ground (e) the concern is not that the notice was not served but rather that the notice is not clear in terms of which building it relates to.
4. In Schedule 1 of the enforcement notice the Council refers to 111 and 111A Denzil Road, London NW10 2XB as "the premises" – shown outlined bold in BLACK on the attached plan - to which the enforcement relates. The alleged breach as outlined in Schedule 2 of the notice is "without planning permission,

the erection of a building in the rear garden of the premises” (“the unauthorised development”).

5. There is no specific requirement for an enforcement notice to include a plan. Regulations require that an enforcement notice shall specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. In this particular case the postal addresses of land affected, Nos 111 and 111a Denzil Road are identified in Schedule 1 of the enforcement notice as the land and premises affected and shown outlined on a plan attached to the notice. However, the plan is somewhat confusing as it excludes part of the land associated with 111 Denzil Road and on which a building is situated. Consequently, although the postal address of the property has been specified on the notice along with a plan, it does not precisely identify the boundaries of the land to which the notice relates and there is some ambiguity with respect to the land affected between the plan and the wording of the notice.
6. In this respect the Council has acknowledged that the plan is inaccurate and has stated that the notice could be corrected by attaching a new plan without prejudicing the interests of the appellant. Indeed, in some circumstances it may be appropriate to change or alter plans attached to enforcement notices without causing injustice to interested parties. In this regard the Council has forwarded a case where a new site plan was submitted without causing any injustice to either party. However, in that particular case there does not appear to have been any controversy in the substitution and it seems that the appellant will have known that the notice related to his site and it was an error that the adjacent site was identified on the plan.
7. I agree with the Council that the plan attached to the notice was not produced to specifically identify the building the subject of the notice, but by excluding part of the land on which there is a building or part of a building to which the enforcement notice may relate it does cause some confusion.
8. Furthermore, the alleged breach of planning control is also imprecise in its description by merely referring to the erection of a building in the rear garden of the premises. Firstly, there is more than one building in the rear garden of the premises and the newest building appears to me to be, in fact, two separate storage buildings each with their own entrance rather than being a single building which effectively wraps around an existing building at the corner of the site as described by the Council in its Statement of Case.
9. The comments made by the appellant in the Enforcement Notice Appeal Form and his letter dated 5 November 2017 reflect his confusion and uncertainty regarding which building or buildings the enforcement notice relate to. Although the appellant has provided some plans of what he describes as the shed and garage (referred to as Storage 01 and Storage 02 on Drawing No AK36/2301) the appellant is unclear that these plans represent the building to which the enforcement notice relates.
10. It seems to me that this originates from the lack of clarity in the identification of the land to which the notice relates as well as the alleged breach of planning control. Therefore, the notice does not tell the recipient what he has done wrong and, where a notice fails to comply with the provisions of section 173, there is no power to vary its terms because the notice is a nullity.

11. I have concluded that the notice is a nullity and in these circumstances the appeal under grounds (a), (b) and (c) 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.

Formal Decision

12. 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. By virtue of section 171B(4)(b) of the 1990 Act the Council is not prevented from taking further enforcement action on this matter.

Alastair Phillips

INSPECTOR