



Appeal Decision

Site visit made on 16 September 2019

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2019

Appeal Ref: APP/T5150/C/18/3219186

Kelly House, Fourth Way, Wembley HA9 0LH

- 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 Kelly Property Company Limited against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 23 November 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises from office to a mixed use as office and public car park (i.e. parking that is not ancillary to the office/industrial use).
 - The requirements of the notice are: STEP 1 Cease the unauthorised use as a public car park. STEP 2 Remove ALL vehicles from the premises, except those which are associated with the office use, from the premises. STEP 3 Remove ALL advertisements and signs associated with the unauthorised use from the premises. STEP 4 Cease the use of online booking systems and advertisements associated with the unauthorised use. STEP 5 Remove all other items associated with the unauthorised use from the premises.
 - The period for compliance with the requirements is: 1 week.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Summary of Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. It became apparent before my site visit that the plan attached to the enforcement notice did not correctly identify the land the Council sought to enforce against. The parties were therefore contacted and the Council's emailed response, of 11 September 2019, acknowledged there had been an error and suggested substituting an amended plan.
3. That amended plan approximately doubled the area of land attacked by the enforcement notice. The appellant's emailed response, of 13 September 2019, raised the prospect of injustice. It appears to me that enlarging the area of land substantially, makes the notice more onerous.
4. For these reasons, injustice would result from accepting the proposed amended plan.

5. On 17 September 2019 the Council issued a fresh enforcement notice against both the land originally affected and the enlarged area. It considered the original enforcement notice to not be invalid but was simply one that did not cover all of the site.
6. However, the specific evidence the Council relies upon to underpin its contention concerning the use as that as a public car park, within appendix 2 to its Statement of Case, seemingly relates only to the enlarged area of land. It may well be that the use also subsists on a part of the site that has actually been enforced against, but this is not evident on the information before me nor from observations during my subsequent site visit, given its layout, and so leads to uncertainty. The enlarged area also has its own separate gated entrance, which has the effect of subdividing the enlarged area from what the Council has actually taken enforcement action against.
7. It also appears that both the appellant and Council's written evidence is focussed on the enlarged area, as opposed solely confined to that immediately surrounding the building. In proceeding to determine the appeal on ground (c) on the basis of the plan attached to the notice, I therefore risk causing injustice to one or both of the parties given the resultant evidence before me, and thus potential for fundamental misunderstanding that could ensue.

Conclusion

8. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the land where the breach of planning control is alleged to have taken place. 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 on ground (c) as set out in section 174(2) of the 1990 Act as amended does not fall to be considered.

Formal Decision

9. The enforcement notice is quashed.

Paul T Hocking

INSPECTOR