
Appeal Decision

Site visit made on 18 November 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Appeal Ref: APP/A4710/C/19/3227859

Land South East of Lumbutts Methodist Church, Mankinholes Bank, Todmorden.

- 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 Dr Nicolas Green against an enforcement notice issued by Calderdale Metropolitan Borough Council.
 - The enforcement notice was issued on 2 April 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the carrying out of operational development on the land comprising of the erection of new buildings on land.
 - The requirements of the notice are:
 1. Remove the new building 1 (marquee) from the Land, including raised decking and timber guard rail surround (see Appendix 1).
 2. Remove the new building 2 (Greenhouse) from the Land (see Appendix 1).
 3. Remove permanently from the land all building materials and rubble arising from compliance with requirement 5(1) and 5(2) above and restore the land to its condition immediately before breach occurred.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)[a], [f] and [g] of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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.

Matters concerning the notice

2. Section 173 of the Town and Country Planning Act (1990)(as amended) (1) states that an enforcement notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control; and b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls. Section (2) goes on to state that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
3. The site comprises a series of structures which have been constructed of wood and plastic sheeting. The notice requires the removal of the new building 1 (marquee) from the Land, including raised decking and timber guard rail surround (see Appendix 1). The notice also requires the removal of new building 2 (Greenhouse) from the Land (see Appendix 1).

4. From my inspection of the site it would appear that the photos contained within Appendix A include buildings other than the marquee and the greenhouse. The appellant points out that the structure identified in the enforcement notice on page 9, New Building 2 (Greenhouse), is an animal shelter adjacent to the Greenhouse. From my inspection I would concur with this. The photograph showing new building 1 (marquee) from path to Stoodley Pike, also appears to show the Greenhouse and not the marquee.
5. A notice should be drafted so as to tell the recipient fairly, what he has done wrong and what he must do to remedy it. The appropriate test is derived from *Miller-Mead v MHLG* [1963] 2 WLR 225 – whether a notice is ‘hopelessly ambiguous and uncertain so that the owner or occupier could not tell in what respect it was alleged that he had developed the land without permission or that he could not tell with reasonable certainty what steps he had to take to remedy the alleged breaches’.
6. It is not sufficiently clear from the enforcement notice, which buildings the Council is seeking to enforce against and which buildings the Council requires to be removed. Given that there are a number of buildings within the site, such ambiguity could lead to the wrong building being removed. Given the penalties for non-compliance with an enforcement notice, it is essential that there is no ambiguity regarding the breach that has occurred and the steps that are required to remedy it.
7. Whilst the matters that appear to the Council as constituting a breach of planning controls are generally stated, it is not open to me to correct the notice since it is not clear which buildings the Council is seeking to enforce against. The enforcement notice has failed to meet the statutory requirements of section 173(2). Accordingly, I find it is defective on its face and is therefore a nullity.

Conclusion

8. I have concluded that the notice is a nullity and in these circumstances the appeal under the ground set out in section 174(2) to the 1990 Act as amended does not fall to be considered.

M Savage

INSPECTOR