



Appeal Decision

Site visit made on 3 February 2020

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 2 March 2020

Appeal Ref: APP/W0340/C/19/3225235

Land at Hill View, Wash Water, Newbury RG20 0LU

- 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 Richard Daryl Tovey against an enforcement notice issued by West Berkshire Council.
- The enforcement notice was issued on 18 February 2019.
- The breach of planning control as alleged in the notice is Without planning permission the carrying out of development by way of building operations upon the Land resulting in erection of 1.8m high sound insulation and security fence as shown coloured blue between points A and B on the attached plan ("the Fence").
- The requirements of the notice are:
 1. Dismantle and remove from the Land the Fence along with all building materials and rubble arising from compliance with this requirement, and restore the land to its condition before the breach took place by [] ; . or [sic]
 2. Reduce the height of the Fence by at least 0.80 metres so that the Fence and Gates do not exceed 1 metre above ground level.
- The period for compliance with the requirements is 8 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The enforcement notice is quashed.

Preliminary Matter

1. Another appeal was made against the notice by Mrs Louise Tovey, but she made the appeal on ground (a) alone and the required fee was not paid in respect of her appeal within the stipulated period. Mrs Tovey's appeal¹ therefore lapsed.

The Notice

2. An enforcement notice must by virtue of section 173(1)(a) of the Town and Country Planning Act 1990 as amended (1990 Act) state the matters which appear to the local planning authority to constitute the breach of planning control. Pursuant to section 173(3) of the 1990 Act, it should also state the steps which are required to be taken, or the activities required to cease.
3. Whilst not hopelessly ambiguous, the enforcement notice in this case does not clearly describe the development alleged to be in breach of planning control.

¹ APP/W0340/C/19/3225236

This is due to apparent inconsistencies within the allegation, reasons and requirements in the notice.

4. The allegation attacks the erection of a fence only – and refers to this as shown coloured blue between points A and B on the plan attached to the notice. The steps in the notice though require removal of the fence, or reduction in the height of the fence so that the ‘Fence *and* Gates’ [my emphasis] do not exceed 1 metre above ground level. Thus, this requirement does not reflect the breach alleged.
5. The reasons for issuing the enforcement notice refer to a planning application which was submitted to ‘seek regularisation of the unauthorised development’ – which based on the allegation, would be the fence only. The ‘unauthorised development’ as defined in the reasons refers though to the fence *and* gates.
6. Under section 176(1) of the 1990 Act, wide powers are available to me to correct any defect, error or misdescription in the enforcement notice, or to vary the terms of the enforcement notice. This is provided that the correction or variation would not cause injustice to the appellant or local planning authority. I could therefore theoretically either correct the allegation to include reference to the gates, or else could correct the requirements to remove the reference to the gates.
7. However, the former correction would extend the allegation. I would also potentially need to vary the second requirement so that this actually stipulates the reduction in height of the gates, rather than only requiring reduction in height of the fence (in order to achieve the stated purpose that both are no more than 1m above ground level). Thus, I would be in that way extending the requirements and making the notice more onerous. As such, injustice would be caused to the appellant.
8. Equally, removing the reference to the gates from the requirements would result in injustice to the Council. This would be by reason of the operation of s173(11) of the 1990 Act. This provision states that where an enforcement notice *could have* required any works to be removed but does not do so, and all of the requirements in the notice have been complied with, planning permission is deemed to be granted in respect of those works not enforced against.
9. The gates are referred to within the enforcement notice as part of ‘the unauthorised development’ and so are referenced as part of the breach. As such, on this basis the notice could have required these to be removed but does not do so. Thus, if I were to remove the reference to the gates from the requirements, this would result in deemed planning permission being granted for the gates under s173(11).
10. I will therefore quash the enforcement notice. This will give the Council the opportunity to consider the position and to decide whether to exercise its powers under section 171B(4) of the 1990 Act to take further enforcement action.

Conclusion

11. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the nature of what is alleged. 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.

12. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the ground set out in section 174(2)(a) 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.

Formal Decision

13. The Enforcement Notice is quashed.

V Bond

INSPECTOR