



Appeal Decision

Site visit made on 3 February 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2020

Appeal Ref: APP/A5840/C/19/3237082

Land lying to the south west of 124 Crofton Road, London SE5 8NA

- 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 Mark Dew against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice was issued on 16 August 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to the storage of waste, building materials and building equipment.
 - The requirements of the notice are Either
 - 5.1 Cease the use of the Land for the storage of waste, building materials and building equipment;
 - 5.2 Remove all waste (including rubble), building material and building equipment from the Land;
 - 5.3 Remove any vehicles and building machinery from the Land;
 - 5.4 Return the Land to its previous condition before the breach occurred by turfing the full extent of the Land and planting no 2 x Standard Caucasian Lime, *Tilia x euchlora* trees each with a stem girth of not less than 12cm 1.5 metres from the ground Each tree to be planted 4 metres from the boundary of the site
 - 5.5 Remove from the Land any material and debris arising from compliance with the requirements of 5.1 to 5.4 above.OR
 - In the Alternative:
 - 5.6 Implement and build out a detached house in accordance with planning permission reference 18/AP/1339 dated 13/05/19 and all of the planning condition attached to that permission
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)[g] of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Matters concerning the notice

2. S173 (3) states that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes. (4) Those purposes are- (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.

3. The requirements of the notice are written in the alternative. The planning permission referred to is dated 13 May 2019 and, from the evidence before me, appears capable of implementation subject to compliance with certain pre-commencement conditions. The period for compliance with the requirements, as set out in the notice, is 12 months. This compliance period applies whichever of the options the appellant chooses to comply with.
4. The scope of the Enforcement Notice is limited by s173(4)(a)¹ and (b)². Having regard to the requirements of the notice, its purpose appears to be to remedy the breach of planning control. There is no statutory power to require the appellant to undertake works which would result in an improvement to the previous condition of the land.
5. I consider that the requirement to implement and build out a detached house goes beyond the purpose of remedying the breach, which is identified as the material change of use of the Land to the storage of waste, building materials and building equipment ("the Unauthorised Use"). My concern in this regard has been raised with the parties and I have taken their responses into account when drawing my conclusions on this matter.
6. The Council asserts that the second option is more informative rather than a step it can actually require. However, it is set out as an option within the enforcement notice. Given the penalties for failure to comply with an enforcement notice, I do not consider it is reasonable for the requirements to be an informative.
7. S176 of the Town and Country Planning Act (1990) (as amended) states that on an appeal under section 174 the Secretary of State may –
 - (a) Correct any defect, error or misdescription in the enforcement notice; or
 - (b) Vary the terms of the enforcement notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
8. Given the powers of correction that are open to me, I have considered whether it would be reasonable to delete the second requirement. However, the appellant has made it clear that he does not intend to choose the first option set out in the notice, which is to cease the use of the Land for the storage of waste, building materials and building equipment³; and has requested I extend the period of compliance to allow a 2.5 year period for the completion of the building works. Deleting the second option would therefore cause the appellant injustice.
9. In the event that I do not delete the second option and agree that the period for compliance should be extended, to allow the dwelling to be built, the logical outcome would be for the compliance period for the first option to also be extended to 2.5 years. However, extending the period for compliance in relation to both options would be tantamount to granting a temporary planning permission, which is not the Council's intention and would therefore cause injustice.

¹ Remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or

² Remedying any injury to amenity which has been caused by the breach.

³ And other requirements set out in sections 5.1 to 5.5 of the Enforcement Notice

10. I have considered whether different time periods would be appropriate. However, if 2.5 years was given for the second option and a shorter period was given for the first option, this would result in significant uncertainty given the pre-commencement requirements which would need to be complied with before the detached house could be built out.
11. I do not consider that the matters raised above are such as would necessarily render the Notice a nullity. This is because the matters that appear to the Council as constituting a breach of planning controls are generally stated. Nevertheless, I conclude that the notice is invalid beyond correction, and should be quashed.

Conclusion

12. For the reasons given above, I consider the enforcement notice is invalid. In these circumstances, the appeal under ground (g) as set out in s.174(2) of the 1990 Act as amended does not fall to be considered.

M Savage

INSPECTOR