



Appeal Decision

Site visit made on 9 March 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2020

Appeal Ref: APP/U1620/C/19/3242237

Land adjacent to 92 Barnwood Road, Gloucester

- 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 New Dawn Homes Limited against an enforcement notice issued by Gloucester City Council.
 - The enforcement notice was issued on 6 November 2019.
 - The breach of planning control as alleged in the notice is:
Without the benefit of express advertising consent, the unauthorised erection of advertising hoarding along the Northern boundary of the site fronting onto the roundabout at the North Eastern end of Eastern Avenue and Barnwood Road.
 - The requirements of the notice are:
Remove the advertising hoardings and any associated material from the site in its entirety.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Procedural matter

2. Section 173(1) of the Act deals with the contents and effect of an enforcement notice, and requires that a 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.
3. S.171A of the Act defines a breach of planning control as constituting:
 - (a) carrying out development without the required planning permission; or
 - (b) failing to comply with any condition or limitation subject to which planning permission has been granted.
4. The enforcement notice in this case alleges neither of these matters; instead it alleges the erection of an advertising hoarding *without the benefit of express*

- advertising consent* (sic). This does not amount to a breach of planning control. Advertisements are the subject of a separate control regime under Chapter III of the Act, (ss. 220 to 225J) and the Town and Country Planning (Control of Advertisements) Regulations 2007. Paragraph 132 of the Revised National Planning Policy Framework notes that a separate consent process within the planning system controls the display of advertisements, which should be operated in a way which is simple, efficient and effective, and that advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.
5. S.222 of the Act provides that where the display of advertisements in accordance with regulations made under section 220 involves development of land:
 - (a) planning permission for that development shall be deemed to be granted by virtue of this section, and
 - (b) no application shall be necessary for that development under Part III.
 6. In this case, the advertisement hoarding is not displayed in accordance with the Regulations, and thus the provisions of s.220 do not apply here, and therefore planning permission is required for the erection of the hoarding as well as advertisement consent. However, the notice is ambiguous, and it has led the Council and the appellants into error in thinking that the deemed application under s.177(1) is one for express consent under the Town and Country (Control of Advertisements) Regulations 2007, and that the only matters which can be considered are amenity and public safety. The deemed application is one for planning permission.
 7. The erection of an advertising hoarding may constitute operational development, or a material change in the use of the land, for which planning permission is required. However, if an enforcement notice is to be issued, it should be clear on the face of it what the breach of planning control is, and that the breach occurred before the period during which enforcement action could be taken has expired, whether that is 4 years or 10 years. No such period has been specified in this case.
 8. I therefore consider that the notice is incapable of being properly understood on the face of it, and that the statutory requirement under s.173(1) has not been met. The notice is therefore a nullity, and I shall take no further action on the appeal.

JP Roberts

INSPECTOR