



Appeal Decision

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 May 2020

Appeal Ref: APP/A5270/C/19/3234991

80 The Ridings, Ealing, London W5 3DR

- 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 Ms Guity Mahmoudi against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 6 August 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation/creation of hardstanding covering the forecourt of the property.
 - The requirements of the notice are:
 - (i) Remove at least 50% of the hardstanding from the front forecourt and replace with soft landscaping;
 - (ii) Restore the garden to its original condition prior to the breach occurring; and
 - (iii) Remove all resultant debris.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Preliminary Matter

2. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available. Both the appellant and the Council were given an opportunity to provide comments on this approach and I have taken any responses into account.

The Notice

3. An enforcement notice should be drafted so as to tell the recipient fairly what they have done wrong and what they must do to remedy it¹. If a notice is ambiguous and uncertain so that the recipient could not tell with reasonable certainty what steps they had to take to remedy the alleged breach a notice may be found to be a nullity.
4. In this case the breach of planning control refers to a hardstanding covering the forecourt of the property. Section 4 (iii) of the notice indicates the purpose of the notice is to remedy the breach of planning control. However, based on the information provided, this is not what would be achieved by requirement (i) in section 5.

¹ *Miller-Mead v MHLG* [1963] 2 WLR 255

5. Moreover, requirement (i) conflicts with requirement (ii), and, there is no "or" between requirement (i) and requirement (ii) to indicate the recipient of the notice may choose between them. Furthermore, requirement (ii) refers to the "garden" yet there is no reference to "garden" in the description of the breach so it is not clear what is meant by "garden" in the context of requirement (ii).
6. As a consequence of the above, the enforcement notice is ambiguous and uncertain. It does not specify with sufficient clarity the steps required for compliance and so it is invalid.
7. I have considered whether I may use my powers under section 176(1)(a) of the above Act to correct the notice. However, deleting requirement (i) would leave the recipient with requirement (ii) which is more onerous than requirement (i). This would cause injustice to the appellant. Deleting requirement (ii) would not fit the purpose of the notice stated in section 4 (iii), and, adding an "or" between requirement (i) and requirement (ii) would not fit the stated purpose of the notice either. Given the above difficulties I am not satisfied the notice can be corrected.

Other Matters

8. My attention has been drawn to planning merits of the development including concerns raised in third party representations. But as the enforcement notice is invalid these cannot be considered as part of this appeal.
9. The appellant should be aware that the Council may issue another enforcement notice against the unauthorised development.

Conclusion

10. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the steps required for compliance. It is not open to me to correct the errors 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 is therefore quashed. In these circumstances the appeals under grounds (f) and (g) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

L Perkins

INSPECTOR