



Appeal Decision

Site visit made on 28 September 2020

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

an Inspector appointed by the Secretary of State

Decision date: 20 October 2020

Appeal Ref: APP/N0410/C/20/3249846

50A Hogfair Lane, Burnham, Buckinghamshire SL1 7HQ

- 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 H Sran against an enforcement notice issued by Buckinghamshire Council - South Bucks area.
- The enforcement notice was issued on 21 February 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a detached dwelling ("the Unauthorised Development") on the Land in the approximate location shown hatched on the Plan *[attached to the notice]*.
- The requirements of the notice are: demolish the building shown hatched on the plan; and remove from the Land all debris and materials arising as a result.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The enforcement notice is quashed.

Procedural Matter

1. During the course of the appeal, the council who originally determined the planning application merged with a number of other local planning authorities into Buckinghamshire Council. The details in this decision reflect this change.

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.
3. By way of background, planning permission was granted in 2019¹ for the erection of a detached dwelling at the appeal site. The Council became aware that a rear dormer window had been constructed on the dwelling which was not shown on the 2019 permission approved plans.
4. The Council proceeded to issue an enforcement notice, which is the subject of this appeal. This was issued under s171A(1)(a) as a breach of planning control comprising the carrying out of development without the required planning permission, rather than under s171A(1)(b), which relates to a failure to comply with any condition subject to which planning permission has been granted. The breach of planning control alleged was the erection of a detached dwelling without planning permission.

¹ PL/19/2297/FA

5. The reasons for issuing the notice reference two conditions on the 2019 permission: condition 5, which relates to the removal of certain permitted development rights, and condition 10, which set out the approved plans. The reasons state that the approved planning permission has not been implemented as the development 'is materially different to that approved', and that the development is 'not therefore subject to the restrictive conditions considered necessary and reasonable'. The reasons explain that the notice essentially attacks the unapproved rear dormer window referred to above. The requirements of the notice then stipulate the demolition of the entire building, and removal of resultant materials/debris.
6. Both main parties acknowledge that the unapproved dormer window referred to has been removed. The Council in its ground (a) submissions also though details additional discrepancies as between the 2019 permission approved plans and the development as constructed. Ground (f) submissions from the Council make it unclear as to whether the Council considers that the additional discrepancies raised would be enough for it to consider that the 2019 planning permission was not implemented. Representations from third parties seem to refer to these additional inconsistencies, whereas the appellant's understanding appears to be that the notice attacks only the additional dormer window.
7. Thus, there is inconsistency as between the allegation, reasons, requirements, and Council's and appellant's representations related to the nature of the breach of planning control which is attacked by the notice. There are theoretically options available to me as to how I deal with the breach of planning control attacked by the notice for the purposes of this appeal. These include whether I limit my assessment to the now-removed dormer window only, or whether I take into consideration the other discrepancies cited; and whether I treat the allegation as development without planning permission, or in breach of condition.
8. However, given the inconsistencies detailed as between the allegation, reasons, requirements and parties' representations, and potential consequences in relation to the ground (a) deemed application and requirements, in the circumstances, there is a risk that injustice would result to the appellant or local planning authority regardless of which approach I take.
9. It would therefore be prudent to quash the enforcement notice and doing so would 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

10. 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 this 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.
11. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (b), (e), (f) and (g) 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

12. The Enforcement Notice is quashed.

V Bond
INSPECTOR