



Appeal Decision

Site visit made on 1 December 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 08 February 2021

Appeal Ref: APP/G5180/C/20/3248433

Land rear of 63 and 65 Widmore Road, Bromley BR1 3AA

- 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 Mortimer Holdings Ltd against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 21 February 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the garage block, shown edged blue on the attached plan for the use as offices.
 - The requirements of the notice are to:
 1. Cease the use of the garage block as offices.
 2. Remove all material associated with the offices from the Land.
 3. Reinstall the garage block.
 - The period for compliance with the requirements is 'Three months'
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Procedural Matters

1. If an enforcement notice does not comply with the various statutory requirements set out in s173 of the 1990 Act, as amended then it will be a nullity and cannot be saved by the curative powers contained in s176(1). Leaving aside, for the moment, the various wording in the notice it appears that the document does contain all the relevant entries so as not to disqualify it at the outset.
2. However, the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 under Part 2, 4C specifies that a notice shall specify "*the precise boundaries of the land to which it relates, whether by plan or otherwise*". In this particular instance the enforcement notice as issued indicates that the land to which the notice relates is:

"Land rear of 63 and 65 Widmore Road, Bromley BR1 3AA, also known as 2 Park Road, shown edged in red on the attached plan". The attached plan does show the site edged red, with the building targeted edged in blue, within. However, the Council, in its Statement of Case, requests that the said wording be changed to *"land to the rear of 64/65 Widmore Road edged blue."*
3. At my site visit I noted that 64 Widmore Road is located some distance east of the subject site and, moreover, is on the opposite side of the street. In fact, it has a different postcode to the site where the building, the subject of the enforcement notice, is located. The Council's request in this respect, therefore, makes no sense.

4. Turning to the site's planning history, as set out in its Statement, paragraph 4.4 says that, following complaints in 2009 it was found that an *"existing garage block had been demolished, and a larger building was being constructed."* It then appears that a retrospective planning application was submitted and titled *'Erection of detached single storey building for use as office (Class B1)'*. Accordingly, the said building's retention was sought. Planning permission was then refused and the Council's decision was subsequently upheld due to an unsuccessful appeal.
5. The above appeal decision letter (APP/G5180/A/11/2156374), dated 29 November 2011, has been provided by the Council and I note the Inspector's comments in paragraph 7:

"The detached office building has been erected in the yard to the rear of 63 and 65 Widmore Road. It has replaced a more modest building that contained three domestic garages..."
6. Following the decision the Council saw it expedient to issue an enforcement notice which, in requiring the removal of the building from the land, specified the alleged breach as:

"Without planning permission, the erection of a detached single storey building, for use as an office, to the rear of nos 63 and 65 Widmore Road..."
7. I have not received any documents to indicate that the above enforcement notice was appealed or subsequently withdrawn and, therefore, having presumably taken effect on 26 March 2012, as stated, it remains in force. In fact, in paragraph 4.12 of its Statement, the Council indicates an intention to bring legal proceedings due to the notice's requirements not having been complied with.
8. Notwithstanding the above, a second enforcement notice, the subject of the current appeal, was issued in February 2020. Despite the planning position I have outlined the notice describes the alleged breach as:

"Without planning permission, the material change of use of the garage block, shown edged blue on the attached plan for the use as offices."
9. Under the 'Reasons for Issue' the notice states:

"The conversion of the garages into offices is more of an intensive use than the lawful use..."
10. It is not clear what exactly the Council considers is "the lawful use" but, nonetheless, following from this the enforcement notice requires cessation of the use of the garage block as offices and, inexplicably, that the garage block be reinstated. I fail to understand, given that the garage building was demolished in 2011 and replaced with a new building used as an office, the notice's construction. I can only imagine that the Council has misconstrued the site's planning history in that planning permission (ref 12/00992/FULL1) was granted in May 2012 for the conversion of the building into 3 garages and 3 cycle stores. However, this permission was never implemented and, moreover, as it was subject to the standard time limitation condition of 3 years, the planning permission therefore lapsed in 2015.

11. A further error in the notice or, at best, a less than precise entry, relates to the 'Time for Compliance'. Although the document is dated and a date is given for the notice to take effect the compliance period is merely termed "*Three months*".
12. In essence, following the garage block being demolished a new building for use as an office was erected in 2011, yet the notice alleges that the existing building has undergone a material change of use from a garage to use as offices and requires that the garage be reinstated. In the reality of the situation this requirement is clearly flawed.
13. In light of the above I have serious doubts as to whether the enforcement notice's content can be considered as sufficiently precise and unambiguous; something one would reasonably expect of a legal document, and certainly one representing a charge on the land. Mindful of the judgement of *Miller Mead v MHLG* [1963] 2 WLR 225 I consider that parallels can here be drawn in that the current notice's construction is so uncertain to the point that the owner or occupier could find it difficult to interpret what steps had to be taken to remedy the alleged breach, and why.
14. In weighing up the factors in this case I am concerned that the enforcement notice is so littered with errors, admittedly of varying importance, that when taken together, they compound to strongly suggest its invalidity. I, therefore, doubt whether, in the form issued, the notice provides the certainty necessary for it to have a reasonable chance of success. The request to change the address of the site, only serves to illustrate the uncertainty.
15. Given also that the 2012 enforcement notice still seemingly holds good I fail to understand the necessity for the new notice which, on the face of it, is not only defective but is superfluous. However, that is a matter for the Council.
10. Under the provisions of section 176(1) of the 1990 Act as amended it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation will not cause any injustice. It is considered that the Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing. However, I cannot here be certain that no injustice would be caused if I were to attempt to make the significant corrections necessary. In other words I find that this notice, as issued, is incapable of correction.
11. In such circumstances it is not open to me to correct the errors in accordance with my powers under s176(1)(a) of the 1990 Act as amended since injustice would likely be caused were I to do so.
12. The enforcement notice is therefore invalid and will be quashed.

Timothy C King

INSPECTOR