
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2021

**Appeal Refs: APP/D3830/C/20/3258462 (Appeal A) and
APP/D3830/C/20/3258463 (Appeal B)**

Springwood Nursery, Nash Lane, Scaynes Hill, West Sussex RH17 7NJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Warren Constantinou (Appeal A) and Ms Rhona Moore (Appeal B) against an enforcement notice issued by Mid Sussex District Council.
 - The enforcement notice was issued on 30 July 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the unlawful construction of a residential dwelling (C3) and associated development (the unauthorised development).
 - The requirements of the notice are:
 - Step 1: The cessation of the construction of the dwelling house (the unauthorised development) hatched in the approximate position on the plan attached to the notice.
 - Step 2 Dismantle or demolish the dwelling house (the unauthorised development), including the removal of the timber frame, concrete base and any footings or foundations hatched in the approximate position on the plan attached to the notice.
 - Step 3 Permanently disconnect the unauthorised development from all services including electricity, mains water and gas.
 - Step 4 Permanently cap and remove all foul drainage systems including the largest.
 - Step 5 Dismantle and permanently remove from the land the gates across the vehicular entrance marked in the approximate location marked A - B on the plan attached to the notice.
 - Step 6 Permanently dismantle or demolish the fence and retaining wall on the southern boundary marked in the approximate location marked C - D on the plan attached to the notice.
 - Step 7 Make good and permanently reinstate the land to its former condition including the reinstatement of former site levels.
 - Step 8 Permanently remove from the land all materials and other debris resulting from steps 2, 3, 4, 5 and 6 above.
 - The period for compliance with the requirements is 24 hours for step 1 and three months for steps 2-6.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Reasons

2. An enforcement notice must enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control, the reasons for issuing the notice, the requirements of the notice and the time for compliance.

3. In this case, the allegation is that there has been the unlawful erection of a dwelling house and associated development. The use of the phrase "associated development" is unclear and is open to interpretation. It is only on reading the requirements part of the notice that it appears this could refer to gates, boundary treatment and other matters. However, that is not certain, especially as the reasons for issuing the notice make no mention of these other matters.
4. As such, I find that the allegation is stated insufficiently clearly and the recipient is left in doubt as to the exact nature of the breach of planning control. I am reinforced in my view as the appellants make no mention of "associated development", gates or boundary treatment in their Statement of Case, relying solely on making their case with respect to the dwelling house. Gates, boundary treatment together with a Klargest treatment plant and other matters are only mentioned in the appellants' Final Comments. The Council also only discuss the dwelling house in their response to the appeal.
5. It is open to me to correct the allegation but this is difficult when there is no certainty over the meaning of "associated development". In addition, to change the allegation in a way which would reflect my observations would significantly alter the notice and the appellants have not had an opportunity in these proceedings to respond to that change by, for example, appealing on one of the other grounds available within section 174 of the Town and Country Planning Act 1990 (the Act). The appellants would therefore suffer injustice.
6. With regard to the time for compliance, section 173(a) of the Act requires that a notice shall specify the period at the end of which any steps are required to have been taken and may specify different periods for different steps. In this case, there are eight steps but the notice only specifies periods for steps 1 - 6. No time for compliance has been specified to make good the land, reinstate it to its former condition and permanently remove from the land all materials or debris arising from steps 2 - 6. As such, the notice may be a nullity, notwithstanding that periods have been specified for steps 1 - 6.
7. It is open to me to deduce the missing periods for steps 7 and 8 from the four corners of the notice, providing there would be no injustice. The notice specifies two periods for compliance, namely 24 hours for step 1 and 3 months for steps 2 - 6. It is unlikely that the Council would have specified 24 hours for step 7 as this was specified for an action in step 1 that could be carried out without much notice. However, it is not clear that the 3 month period was also intended for step 7. This is because step 7 specifies reinstatement "including the reinstatement of former site levels" and this could be a piece of work that involved planning, precise execution and substantial engineering works, which could possibly take longer than 3 months. I am led to this view as the Council's photographs of the site (Appendix 14) show significant ground works around the building.
8. Having regard to step 8, a longer period than 24 hours may be required to remove several skip loads or lorries full of material but then again, the longer period of 3 months, given for steps 2 - 6, may not be necessary. As such, I find it is not possible to deduce the missing periods for step 7 and 8 from the notice and subsequently direct that the notice be varied, without causing injustice.
9. Finally, steps 4 to 6 require the removal of a Klargest treatment plant, gates and boundary treatment. As explained already, these are not explicitly

referred to in the allegation and are not mentioned in the reasons for issuing the notice. It is therefore open to me to direct that the notice be varied to omit these steps. This could be done without causing injustice as the requirements would be reduced for the appellants and it is open to the Council to issue a new notice.

Conclusion

10. For the reasons given above, I conclude that the notice does not specify with sufficient clarity the alleged breach of planning control and the time for compliance. In addition, the requirements specified go beyond what is alleged to have taken place. The latter though could be varied without causing injustice. However, it is not open to me to correct or vary the other errors in accordance with my powers under section 176(1) of the Act since injustice would be caused were I to do so. The notice is thus invalid for the reasons stated and will be quashed. In these circumstances the appeal under ground (c), as set out in section 174(2) of the Act, does not fall to be considered.

D Fleming

INSPECTOR