



Appeal Decision

Site visit made on 3 February 2021

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2021

Appeal Ref: APP/G0908/C/20/3260841

Land adjacent to Brookside House, Water Street, Wigton

- 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 1990 Act).
 - The appeal is made by Mr Thomas Anthony Wharton against an enforcement notice issued by Allerdale Borough Council (the LPA).
 - The enforcement notice was issued on 28 August 2020.
 - The breach of planning control as alleged in the notice is: the development has not been built [*sic*] in accordance with the approved details on planning application 2/2010/0633.
 - The requirements of the notice are: Part-demolish and alter the building to result in the gable being the approved separation distance to Brookside House, Water Street, Wigton as specified in planning permission 2/2010/0633.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The enforcement notice is quashed.

The Notice

2. Whilst it is not a matter that has been raised by the parties, I have a duty to consider any defects within the enforcement notice and, where possible, make any necessary variations or corrections to put the notice in order. As a legal document, it is important that the enforcement notice is legible on its face, without needing to infer or imply its meaning.
3. Section 173(1) of the 1990 Act states that an enforcement notice shall state – (a) the matters which appear to the local planning authority to constitute a breach of planning control: and (b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls. Section 173(2) of the 1990 Act states that a notice complies with subsection (1)(a) if it enables any person on whom a copy of the notice is served to know what those matters are. Section 173(3) states that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the purposes set out in section 173(4).
4. The enforcement notice sets out that it has been issued by the Council because it appears to them there has been a breach of planning control under

- section 171A(1)(a) of the 1990 Act. A breach of planning control under section 171A(1)(a) is the carrying out of development without the required planning permission. In addition, the notice makes clear that the breach of planning control has occurred within the last four years. This also suggests that the Council consider the breach amounts to the carrying out of development without planning permission, since four years is the relevant time period under section 171B(1) of the 1990 Act.
5. The breach of planning control is described as, "the development has not being build [*sic*] in accordance with the approved details on planning application 2/2010/0633." The description of the breach does not indicate what the development is which has not been built in accordance with the referenced planning permission. Having raised this matter with the Council, it has subsequently indicated that the development as built is a different development to that which the 2010 permission relates. It has also been stated that the 2010 permission has not been implemented and is incapable of implementation. On that basis, I am satisfied that the breach of planning control to which the notice relates amounts to development without planning permission under section 171A(1)(a) of the 1990 Act.
 6. As a consequence, it is necessary to correct the allegation within the notice to ensure it is directed against a specific development. However, it is not clear whether the notice is directed against the construction of the building as a whole or just that part of the building which is closest to Brookside House. The land to which the notice covers the entire building, since that is the land edged red on the attached plan. On the other hand, the requirements of the notice seek only to part-demolish and alter the building so that the part of the building closest to Brookside House is reduced in size.
 7. Therefore, were I to correct the notice so it refers to the erection of the building as a whole, that would potentially broaden the scope of the notice, which would result in injustice to the appellant. In contrast, correcting the notice to refer to just part of the building could result in injustice to the Council since the intention may have been to target the building in its entirety. Ultimately, the notice is not clear on its face.
 8. The requirements of the notice are, "to part-demolish and alter the building to result in the gable being the approved separation distance to Brookside House, Water Street, Wigton as specified in planning permission 2/2010/0633."
 9. However, the requirement does not specify which parts of the building are to be demolished nor does it indicate how the building should be altered. Moreover, referring to a separation distance set out in the 2010 planning permission rather than a specific figure, results in a degree of uncertainty over exactly what the appellant has to do to remedy the breach of planning control or, as the case may be, remedy any injury to amenity.
 10. Furthermore, there is a question mark over whether the requirements can practicably be achieved. Reducing the width of the building at one end would have ramifications for the structure as a whole. The internal space of that part of the building closest to Brookside House would be substantially reduced in contrast to the remainder, whilst the external appearance of the building would appear somewhat incongruous without further changes to the roof, fenestration or overall design of the building.

11. If the requirement in its present form was complied with, it would result in an unconditional planning permission being granted for the new building under section 173(11) of the 1990 Act. This would result in injustice to the Council, since the building which would remain may not be suitable in planning terms or indeed may require conditions which are necessary to make it suitable. On that basis, I find that the requirements of the notice are vague and uncertain, and the notice should be varied to delete them.
12. However, requirements to either remedy the breach or remedy the injury to amenity would need to be inserted into the notice. It is not clear from the evidence before me what requirements would suitably overcome the planning harm and thus remedy any injury to amenity.
13. Likewise, in order to remedy the breach, the notice could be varied to require the building to be demolished. However, this would result in injustice to the appellant since it would leave them in a worse position than if they had not appealed. On the other hand, a requirement to ensure compliance with the 2010 permission would not be appropriate since that permission is no longer extant and is incapable of implementation.
14. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control nor is it clear the steps required for compliance. It therefore does not comply with the requirements of section 173(2) or section 173(3) of the 1990 Act. It is not open to me to correct the error 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 will be quashed.
15. In these circumstances, the appeals on the grounds set out in section 174(2)(a) 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.

J Whitfield

INSPECTOR