



Appeal Decision

Site visit made on 27 July 2021

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2021

Appeal Ref: APP/Y5420/C/20/3262046

Land at 19 Bruce Castle Road, London N17 8NL

- 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 Jo Olsson against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 21 September 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a roof terrace on the first floor rear of the property.
 - The requirements of the notice are:
 1. Permanently remove the roof terrace and balustrades;
 2. Permanently fix shut the door leading on to the roof terrace;
 3. Remove any resultant debris.
 - The period for compliance with the requirements is Three (3) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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DECISION

1. The enforcement notice is quashed.

REASONS

The property

2. The property is a two storey mid-terrace dwelling with a single storey flat roofed element at the back and a rear dormer.
3. The planning history provided by the Council shows that planning permission was granted for the dormer in January 2004 but there is no record of permission for an extension. The appellant explained that in 2004 development took place at the back of the property, which included a flat roof over the extended kitchen and existing ground floor bathroom and the replacement of a first floor bay window by a full length glass French door to the first floor rear bedroom.

Enforcement notice

4. The description of the alleged breach of planning control is "the erection of a roof terrace on the first floor rear of the property".
5. In correspondence during the enforcement investigations the appellant sought clarification from the Council on the element referred to as a roof terrace. The appeal documents do not include a response from the Council on this particular

- point. The Council's appeal statement includes a photograph of the rear of the property to show the development that led to the issuing of the notice. The image identifies the safety rail or balustrade and the door leading out onto the roof but does not help to describe the roof terrace in any detail at all.
6. The wording of the allegation indicates that building works have taken place to create, or erect, a roof terrace. The requirements indicate that balustrades form an integral part of the roof terrace and that a door at first floor level facilitates its use. However, the requirements do not specify what must be done to remove the roof terrace. The reasons for issuing the notice do not assist in understanding what constitutes the roof terrace.
 7. The appellant has removed the balustrades but is uncertain as to what to do in order to remove the roof terrace. The appellant explained that when the flat roof was replaced seven or eight years ago the replacement included a covering on top of the flat roof to help minimise the risk of further water egress. Similarly, when problems reoccurred the builder again put a covering on the flat roof. The appellant wonders whether the cladding/decking on the flat roof should be removed.
 8. With reference to section 173 of the 1990 Act, an enforcement notice has to state the matters which appear to the local planning authority to constitute the breach of planning control. A notice complies with that requirement if it enables any person on whom a copy is served to know what those matters are. In addition, the notice has to specify the steps which the authority requires to cease in order to achieve wholly or partly the purpose of the notice. These requirements are expressed in the test from the *Miller-Mead* judgement "Does the notice tell the person on whom it is served fairly what he has done wrong and what he must do to remedy it".¹
 9. In my view the enforcement notice is not so hopelessly ambiguous and uncertain that it is a nullity. However, I am concerned with the lack of specificity in the requirements. It is important that the recipient of the notice knows precisely what needs to be done because of the criminal liability that attaches if a notice is not complied with.
 10. I have the power to correct any defect, error or misdescription in the notice or to vary the terms of the notice. The exercise of this power is subject to no injustice being caused to either the appellant or the local planning authority. I do not know exactly what works the Council expect to be done and consider necessary in order to remove the roof terrace, for example whether or not it would involve the removal of decking or the supporting base frame, or both, or additional works. To potentially expand the scope of the requirement would cause injustice to the appellant. On the other hand, to omit a necessary element would cause injustice to the Council.

Conclusion

11. 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 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.

¹ *Miller-Mead v Ministry of Housing and Local Government* [1963] 2 WLR 225

12. In these circumstances the appeal under grounds (b), (c) and (f) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Diane Lewis

Inspector