



Appeal Decision

Site visit made on 27 September 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday, 07 January 2022

Appeal Ref: APP/C5690/C/21/3275173

Land at Rosenthal House, 43-47 Rushey Green London SE6 4AS

- 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 Kadmit Singh Nangpal against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 6 April 2021.
 - The breach of planning control as alleged in the notice is: The installation of 4 large storage/shipping containers on the car park of Rosenthal House (the land) without the benefit of planning permission.
 - The requirement of the notice is: remove the 4 storage/shipping containers from the land of Rosenthal House, 43-47 Rushey Green London SE6 4AS.
 - The period for compliance with the requirements is 3 months from when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary Decisions: The enforcement notice is quashed.

Reasons

1. I have identified defects in the enforcement notice. The appellant has also raised an issue with the notice, although this has been put under his ground (f) appeal. Nevertheless, this has caused me to consider the position with regard to the validity of the notice or, indeed, whether it is a nullity. In this regard, the powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b) of the 1990 Act, to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation will not cause any injustice to the appellant or the local planning authority.
2. Firstly, the allegation is of 'the installation of 4 storage/shipping containers'. I will refer to these as 'containers' in this decision, in the interests of consistency. Part 1 of the notice informs that this is a breach of planning control falling within section 171A(1)(a) of the 1990 Act, which is the carrying out of development without the required planning permission. Development is defined in section 55(1) of the 1990 Act as 'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land'.
3. The notice does not explicitly specify whether it targets a material change of use of the land or the carrying out of operations. However, I note that in part 4 it states that the containers have been installed within the last 4 years. This

is a time limit referred to in section 171B(1) of the 1990 Act, which relates to a breach of planning control consisting of the carrying out of operations. It is, therefore, clear that the allegation in the notice is of the carrying out of operations, rather than a material change of use.

4. Although the position of the containers is not indicated on the plan attached to the enforcement notice, their location is described in the officer's report. At the site visit I noted 5 containers located in the parking area to the rear of the building. These had been positioned side by side in a row, with the metal doors to each container facing towards the rear elevation of the building.
5. Whilst each container is not insubstantial, they appear to be of the standard size for such transportable metal storage containers. None appeared to have been altered in any way to increase their size or form. This suggests to me that each container had been brought onto the site whole, rather than having been constructed on site, and that they could also be removed as such. There does not appear to have been any particular works of preparation of the ground to accommodate the containers, other than the placing of wooden blocks upon which each container was resting. I did not observe any obvious means of physical attachment to the ground. As for services, I only observed a means of lighting that was powered by an extension cable running from elsewhere on the site.
6. The containers may have been on the site since January 2020. However, I did not observe any obvious external alterations or any attempts to screen the containers, such that they would have a character and appearance that is more permanent.
7. Having regard to the above, I consider that as a matter of fact and degree the containers that are the target of the notice do not constitute development as they are not a building or other operation as defined under section 55(1) of the 1990 Act. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Because the breach of planning control as alleged in the notice does not constitute the development of land, it follows that planning permission would not be required for it. The notice is, therefore, defective in that respect, although I do not find it so hopeless as to render it a nullity.
8. Turning to whether I am able to correct the notice, whilst it refers to the 'installation' of the containers, an allegation of a use for the storage of the containers would not be correct. The Council have suggested that they are used to store furniture relating to the appellant's business, and I observed boxed items within each container on site. The containers are not, therefore, stored on the land but used to facilitate some other use.
9. I have considered a correction to allege a use for the storage of furniture, facilitated by the containers. However, the Council say that the whole of the appeal site is in a mixed use. I cannot, therefore, be certain that an allegation of a use for storage of furniture alone or as part of a mixed use would be correct, or whether the enforcement notice if corrected would accurately identify the planning unit in this case; I do not have sufficient evidence before me to make such judgements. As no other corrections to the notice are obvious to me, I can only conclude that I am not able to correct the notice.

10. Even if I were able to correct the notice, I cannot be certain that injustice would not be caused. With a different allegation, the appellant might have approached his appeal differently or appealed under different grounds, given the opportunity.
11. Notwithstanding my findings above, I note the appellant's case, that the notice is invalid as it refers to only 4 containers at the appeal site, whereas there are 5. The appellant suggests that the 5 containers have been on the site since January 2020, and so were in place when the enforcement notice was issued. Were I not to have already found fault with the notice, for the reasons set out above, I would have some sympathy with the appellant; as a recipient of the notice they are not able to understand with the necessary degree of certainty which 4 of the 5 containers are the target of the notice and, therefore, which 4 are to be removed in compliance with the requirement of the notice. I would, therefore, have concluded that the notice is defective for this reason. However, as I have concluded that the notice is defective for other reasons and that I am not able to correct it, I have not considered this matter further.

Conclusion

12. For the reasons given above, I conclude that the breach of planning control alleged in the notice is not correct and that I am not able to correct it. Even if I were, it is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act, since I cannot be certain that injustice would not be caused were I to do so. The enforcement notice is invalid and will be quashed.
13. In these circumstances, the appeal on grounds (a) and (f) set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Formal Decision

14. The enforcement notice is quashed.

J Moss

INSPECTOR