



Appeal Decision

Site visit made on 5 January 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 24 January 2022

Appeal Ref: APP/J3015/C/21/3277846

140 Queens Road, Beeston, Nottingham, NG9 2FF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Iftikhar Umer against an enforcement notice issued by Broxtowe Borough Council.
 - The enforcement notice was issued on 24 June 2021.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, an air conditioning/chiller unit has been installed on the rear wall of the premises.
 - The requirements of the notice are to
 - (i) Permanently cease use of the air conditioning unit/chiller unit
 - (ii) Permanently remove the air conditioning/chiller unit from the building.
 - The period for compliance with the requirements is
 - (i) 28 days
 - (ii) 56 days
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission deemed to have been made under section 177(5) of the Act falls to be considered.
-

Decision

1. Since the notice is found to be a nullity, no further action will be taken in connection with the appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act as amended.

Matters concerning the notice

2. Section 173 of the Act covers the content of enforcement notices and identifies a number of matters that an enforcement notice shall state or specify. Subsection (10) of section 173 of the Act states that an enforcement notice shall specify such additional matters as may be prescribed. Those additional matters are found in Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the Regulations 2002.)
3. Regulation 4(a) of the Regulations 2002 requires the notice to specify the reasons why the local planning authority consider it expedient to issue the notice. These requirements are clearly set out in the example enforcement notice on operational development found within the Planning Practice Guidance.
4. It is vital that anyone served with a copy of an enforcement notice should be able to understand, from the outset, the reasons why the local planning authority issued the notice. Moreover, it is a prerequisite for taking

- enforcement action (Section 172(1)(b) of the Act) that it should appear expedient to the Council to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
5. Under the heading the "Reasons for issuing this Notice" the Council has said that planning permission should not be given because "planning conditions could not overcome these objections to the development". However, these objections are not set out in the enforcement notice. Whilst the Council has then referred to two development plan policies, no specific elements of those policies have been quoted which could have been used to identify a link to previously stated reasons.
 6. The enforcement notice is missing vital elements that are required by statute to be included in the notice. The omission from the notice of the reasons to support why the Council considered it expedient to issue the notice was presumably an oversight. It is not however capable of subsequent correction if further information is provided as the requirements of the legislation require these matters to be addressed in the notice at the outset so that the appellant is able to respond fully with regard to all matters raised in the notice.
 7. Complete omission of reasons from the notice constitutes a failure to comply with Section 173(10) of the Act as amended and Regulation 4 of the Regulations 2002. The notice is therefore defective on its face and a nullity.
 8. The Council was asked to comment upon the lack of reasons and advised that the Inspector would have to consider whether or not the appeal could proceed. It did subsequently state that the reason for the notice is adverse impact on amenity of nearby residents due to noise. However, the Council's position about whether conditions can overcome any noise concern was not clear, in any event, as the Council stated that the primary condition was for a noise report and other suggested conditions were alternatives. The appellant had asked during the course of the appeal whether or not he has to commission a noise report as he is concerned about the expense.
 9. Should the Council wish to continue to pursue enforcement action, it may consider doing so by means of a replacement notice framed in the proper terms, having regard to the 'second bite' provisions of section 171B(4)(b) of the Act. In terms of reasons for issue, the appellant would need to understand why enforcement action is considered appropriate.

Conclusion

10. For the reasons given above, I conclude that the notice is a nullity. In the circumstances, the appeal under the grounds set out in section 174(2)(a) and (c) of the Act and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

E. Griffin

INSPECTOR