



Appeal Decision

Site visit made on 14 March 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 April 2022

Appeal Ref: APP/F4410/C/21/3285635

The land situate and known as the NCB Officials Club, The Crescent, Woodlands, Doncaster, DN6 7RP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Ryan Morling (Rhinos Ltd) against an enforcement notice issued by Doncaster Metropolitan Borough Council.
 - The notice was issued on 15 September 2021.
 - The breach of planning control as alleged in the notice is Without planning permission the replacement of the first floor windows on the front and side elevation of the commercial building on the Land with clear glazed windows at the approximate position marked between points A and B in blue on the attached Plan B.
 - The requirements of the notice are:
 - i) Replace the windows at the first floor level on the front and side elevation in the approximate position marked between points A and B in blue on the attached Plan B with obscure glazed glass to level 3 or higher on the Pilkington scale of privacy or equivalent up to a minimum height of 1.7m above the internal floor level of the room in which it is installed; and
 - ii) Ensure that the windows at the first floor level on the front and side elevation in the approximate position marked between points A and B in blue on the attached Plan B are non-opening up to a minimum height of 1.7m above the internal floor level of the room in which it is installed.
 - iii) Upon compliance of steps i) and ii) above permanently remove the resultant materials from the Land.
 - The periods for compliance with the requirements are:
 - Step i): 2 months
 - Step ii): 3 months
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (e) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

The Notice

2. Although this appeal is made on a number of grounds, as set out above, I must initially address a number of matters relating to the enforcement notice.
3. First, in accordance with section 173(1) of the Act, a planning enforcement notice must state, 'the matters which appear to the local planning authority to constitute the breach of planning control' and it must be stated in such a way that it 'enables any person on whom a copy of it is served to know what those matters are' (section 173(2)). In other words, the allegation must be clear.

4. This notice refers to 'the replacement of the first floor windows on the front and side elevation of the commercial building on the Land with clear glazed windows'. While this may, strictly speaking, be true, it implies that the previous windows were not clear glazed. This impression is reinforced by Section 5 of the notice, which requires the windows to be replaced with obscure glazed items. Yet the Council now suggests that the previous windows were also clear glazed. The new windows are, in fact, much larger than the old ones, but this is not mentioned in the notice. Overall, therefore, the allegation does not give a full and accurate picture of what has occurred. It is clear that this has created uncertainty – the appellant stating 'The windows were always clear' in the grounds of appeal.
5. Second, the requirement for the windows to be replaced with obscure glazing seems out of step with the development that has actually taken place. Given the Council's current view, that the previous windows have been replaced with larger ones, the notice would clearly not result in the breach of planning control being remedied in accordance with section 173(4)(a) of the Act.
6. The Council might take the view that the requirement for obscure glazing would remedy harm to amenity under section 173(4)(b). However, it seems to me that the notice could at least have left the appellant with the option of reverting to the smaller, clear-glazed windows that previously existed. While that might not have fully addressed the Council's overlooking concern, there is no justification for imposing a requirement to improve on the pre-existing situation. To do so would go beyond either of the purposes of a notice prescribed by section 173(4). Thus, by leaving the appellant with no option but to effectively replace the original clear-glazed windows with obscure-glazed (albeit larger) units, the requirements of the notice are disproportionate.
7. Third, it is not entirely clear whether the whole windows (frame and glass) are to be replaced or just the glass. Requirement (i) states 'Replace the windows at the first floor level on the front and side elevation in the approximate position marked between points A and B in blue on the attached Plan B with obscure glazed glass to level 3 or higher on the Pilkington scale of privacy'. The suggestion of replacing 'the windows' (which implies frames and glass) with 'obscure glazed glass' (which clearly does not include the frames) creates uncertainty regarding precisely what is to be replaced.
8. Fourth, Section 5 of the notice sets out 3 requirements, numbered (i)-(iii). The time for compliance sets periods for compliance for requirements (i) and (ii), but fails to set any period for compliance for requirement (iii).
9. Section 173(9) of the 1990 Act states:

An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities;
10. Thus, it is clear that an enforcement notice must specify a period for compliance for all the steps (whether individual periods for each step or a composite period for all the steps). The notice is therefore deficient in this respect and cannot remain unchanged.
11. Moreover, requirement (ii) seeks to ensure that the windows are non-opening up to a minimum height of 1.7m above the internal floor level. This has its own

timescale of 3 months. Yet under Requirement (i), the windows would have already been replaced after 2 months. It appears inconsistent and illogical to ensure the windows are non-opening a month after they are installed. Thus, while I cannot be completely sure that this was unintentional, it adds to the impression that the timescales have been erroneously drafted.

12. For all of the above reasons, while the notice is not so ambiguous as to render it a nullity, it is clearly flawed and cannot remain as it is. Under section 176(1) of the Act I have the power to correct any defect, error or misdescription in the notice, provided it does not lead to injustice to the Council or the appellant. I have therefore considered whether it is possible to correct the notice in this case.
13. Neither party has suggested any alternative wording to make the allegation in the notice clearer. However, it seems to me that it would need to be significantly different to the allegation the Council has used and would also lead to different requirements. In my judgement, the changes I would need to impose would be likely to have a significant effect on the cases the parties would wish to put forward at appeal and might also affect the grounds of appeal the appellant would wish to pursue. I would be further hampered in revising the requirements of the notice since I am not sure whether the Council sought the replacement of the whole frames or just the glass.
14. Moreover, introducing a limit for completion of Requirement (iii) would make the notice more onerous. Neither party has referred to the missing timescale and I have no suggestions of an appropriate compliance period to impose. Imposing an additional compliance period could affect the appellant's case and the grounds of appeal the appellant would have wished to pursue.
15. For these reasons, while some aspects of the notice could be corrected, I conclude that I am unable to correct all the defects without causing injustice to the Council or the appellant.

Conclusion

16. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance or the period for compliance. It is not open to me to correct the errors 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. In these circumstances, the appeals on the grounds set out in section 174(2)(b), (c), (d) and (e) of the 1990 Act as amended do not fall to be considered.

Peter Willows

INSPECTOR