



Appeal Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 8th April 2022

Appeal Ref: APP/C4615/C/21/3288221

472 Birmingham New Road, Dudley, Bilston WV14 9QF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Davinder Singh against an enforcement notice issued by Dudley Metropolitan Borough Council.
- The notice was issued on 3 November 2021.
- The breach of planning control as alleged in the notice is: Without planning permission and within the last four years the erection of a means of enclosure consisting of timber fencing and associated concrete gravel boards and posts adjacent to the highway and exceeding a height of 1m (as shown on the attached photographs)
- The requirements of the notice are to:
 - i) Take down and remove from the Land the means of enclosure. This consists of concrete gravel boards, concrete posts and fencing which is positioned adjacent to and within 2 metres of the highway of Harvington Road.
 - ii) To remove and lawfully dispose of any debris or otherwise from the land arising from works carried out in compliance with the above (i)The period for compliance with the requirement is one month.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Summary of Decision: The notice is quashed.

Decision

1. The enforcement notice is quashed.

The Notice

2. Case law¹ has established that the appellant must be able to understand from the four corners of the notice what the allegation is and what the Council is expecting the recipient to do in order to comply with the terms of the notice.
3. The notice alleges "*without planning permission and within the last four years the erection of a means of enclosure consisting of timber fencing and associated concrete gravel boards and posts adjacent to the highway and exceeding a height of 1 m (as shown on the attached photographs)*". The three photographs attached show a fence on three sides namely a longer length of fencing parallel with Harvington Road and two shorter lengths of fencing enclosing part of the garden area to the front and to the side boundary with 1 Harvington Road. The photographs are not marked in any way to show the

¹ Miller -Mead v MHLG {1963} 2 WLR 225

extent of the fence to be removed which suggests it is the whole of the fencing shown in the photographs.

4. However, the corresponding requirement is for the enclosure to be removed but then defines the enclosure as concrete gravel boards concrete posts and fencing which is positioned adjacent to and within 2 metres of the highway off Harvington Rd. This requirement lacks clarity as it is not clear what the appellant is required to do if the notice were to be upheld or why this additional wording has been added if the Council is simply seeking removal of "the enclosure" which as an allegation includes all the fencing shown in the photographs.
5. The distance of 2 metres appears arbitrary and the reasons for the notice do not expand upon why this additional wording is required. If the Council is not seeking the removal of all of the fencing shown in the photographs, the extent of the required removal could have been clearly marked on the photographs. Whilst I do have powers to correct and vary the wording, the Council was asked about the wording of the notice and no changes to the wording were proposed and they wished to proceed with the notice. The Council did in its response state that elements of the enclosure which are set back more than 2 metres from the highway need not be removed. However, that still leaves the question of which elements can remain and why the parts that have to be removed were not clearly identified in the notice.
6. The appellant who is unrepresented appears to be confused by the notice and for example thinks there is an option to reduce the fence 1 metre which could potentially be a hidden ground (f) appeal. A third party also comments upon a reduction of 1 metre. However, in order to pursue a ground (f) or any other ground of appeal, the appellant needs to be able to understand the notice on its face and that is not the case here. The only reference in the notice to 1 metre is in the allegation which is not needed in any event when the fencing has been built without planning permission. Proceeding with the current notice in view of the lack of clarity would therefore be contrary to case law and the principle of fairness and not causing injustice to any party.
7. It is open to the Council to serve a further notice which clearly sets out the nature of the breach and the requirements, should it consider it expedient to do so, subject to the provisions of Section 171B(4) of the 1990 Act.

Conclusion

8. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the grounds set out in section 174(2)(a) of the 1990 Act as amended do not fall to be considered.

E. Griffin

INSPECTOR