



Appeal Decisions

Site visit made on 1 March 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2022

Appeal A Ref: APP/Z1510/C/20/3263700

Appeal B Ref: APP/Z1510/C/20/3263701

Appeal C Ref: APP/Z1510/C/20/3263702

Colne Commercials, 136 Colchester Road, White Colne, Essex CO6 2PP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Michael Melia (Appeal A), Mr Paul John Melia (Appeal B) and Mrs Judith Stephanie Melia (Appeal C) against an enforcement notice issued by Braintree District Council.
 - The enforcement notice was issued on 23 October 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the installation of steel mesh fencing and matching gates to a maximum height of 1.9 metres covering the site frontage adjacent to the highway.
 - The requirements of the notice are:
 - a) Entirely remove the steel mesh fencing and matching gates from the front of the site situated adjacent to the highway.
 - b) Remove from the land all materials from the actions at (a) above.
 - The period for compliance with the requirements is 2 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(e), (c), (a) and (f) 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.
 - Appeals B and C are proceeding on the grounds set out in section 174(2)(e), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. Since the notice is found to be a nullity, no further action will be taken in connection with the appeals. In light of this finding the Local Planning Authority (the LPA) should consider reviewing the register kept under section 188 of the 1990 Act as amended.

The Notice

2. Section 172(1)(b) of the 1990 Act states that the LPA may issue a notice where it appears to them that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
3. Section 173(10) of the 1990 Act states that a notice shall specify such additional matters as may be prescribed. The additional matters are prescribed in the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the ENAR).

4. Regulation 4(a) of the ENAR states that a notice shall specify the reason why the LPA considers it expedient to issue the notice. Regulation 4(b) states that a notice shall specify all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice.
5. The LPA's reasons for issuing the notice are set out at paragraph 4. The reasons set out the policies which are relevant and which the Council considers the development to be in conflict with. However, the reasons do not set out how or why the Council believe the development to be in conflict with those policies or indeed what those policies seek to achieve. Otherwise, paragraph 4 of the notice is simply a statement of facts.
6. Firstly, it states that the alleged breach had occurred within the last four years. Secondly, that the alleged breach had been brought to the attention of the LPA. Thirdly, that the site is located adjacent to a Grade II listed building. There is no indication as to whether the development is considered to have an effect on the listed building and its setting. It is simply a statement of fact. Thereafter paragraph 4 refers to the refusal of a retrospective planning application for the alleged breach and that the development remains in place without the benefit of planning permission. As a result, there is nothing within the notice which allows the recipient to understand from that contained within its four corners, why the LPA consider it expedient to take enforcement action.
7. I therefore consider that the notice fails to meet the statutory requirements of section 173(10) and Regulation 4(a) of the ENAR. I find as a result that the notice is a nullity.

Conclusion

8. I conclude that the notice is a nullity. In these circumstances, the appeal on the grounds set out in section 174(2)(e), (c), (a) and (f) of the 1990 Act and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act in respect of Appeal A; and, the appeals on the grounds set out in section 174(2)(e), (c) and (f) of the 1990 Act as amended in respect of Appeals B and C, do not fall to be considered.

J Whitfield

INSPECTOR