
Appeal Decisions

Site Inspection on 23 May 2022

by Graham Self MA MSc FRTPI

Inspector appointed by the Secretary of State

Decision date: 23 June 2022

Appeal Reference: APP/W0340/C/22/3290115

Site at: 10 Alexander Road, Thatcham, Berkshire RG19 4QU

- The appeal was made by Mr Ken Miles under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by West Berkshire District Council.
- The council's reference is 19/00091/05NOAC.
- The notice is dated 8 December 2021.
- The breach of planning control alleged in the notice is: "Without planning permission, the erection of part of a three storey rear extension to the property on the land as shown on the attached plan highlighted and edged in red on Plan A".
- The requirements of the notice are:
 - (i) Demolish that part of the unauthorised development, namely part of the 3-storey rear extension as shown marked in red on the attached plan A and as outlined in red on drawing CP0101 also attached. The rear elevation of the dwelling shall be remodelled in accordance with the scheme approved under application 06/01369/HOUSE as shown on drawing CPO100 and highlighted yellow.
 - (ii) The above referred to plans were submitted by Mr Miles under application 18/02856/HOUSE and the subsequent appeal as a true representation of the earlier approved scheme 06/01369/HOUSE. In the absence of the plans on the planning file the Council accept these as an accurate reflection of what was previously approved and for the avoidance of doubt these are the plans that must be adhered to.
 - (iii) Remove from the land all building materials, debris and rubble arising from compliance with requirement (i) above, and restore all of the land to its condition before the breach took place by levelling the ground.
- The period for compliance is nine months.
- The appeal was made on grounds (b) and (c) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act has lapsed.

Appeal Reference: APP/W0340/C/22/3290116

Site at: 10 Alexander Road, Thatcham, Berkshire RG19 4QU

- The appeal was made by Mrs Judith Miles. All other details are the same as those above.

Timing of Decision

1. This decision has been delayed to allow for the submission and exchange of written responses to questions I raised following my site inspection, as explained below.

Validity of Enforcement Notice

2. When reading the case documents available to me in preparation for the site inspection I was unable to find copies of the drawings or plans referred to in the part of the enforcement notice specifying its requirements (described as "attached Plan A" and "drawing CPO101 also attached"). All I could find was Drawing Number BL002 Revision A dated February 2006, and a site location map. I assumed that this was due to a technical computer-related issue and that the plans could be checked during the site inspection. However, at the inspection the council's representative did not have copies of the plans, and Mr Miles' copy of the enforcement notice did not appear to include any such attachments. I therefore emailed some questions to the council, including a question asking whether the drawings or plans referred to in the notice were attached to it. As is normal practice in the interests of fairness, the exchanges of emails have been copied to the appellants and they have had opportunity to submit comments.
3. After some delay, the council has confirmed that the drawings were not attached to the enforcement notice. The council has also expressed the view that the enforcement notice was invalid, but has not withdrawn it, and has asked me to consider amending it by attaching the missing plans. In support of this request, the council say that the landowner was aware of the issues on the site following discussions with council officers and an earlier appeal decision in 2019.
4. I have considered the suggestion that the enforcement notice could be amended, bearing in mind that inspectors deciding appeals have powers to correct or vary enforcement notices where such a step would not cause injustice to any party.
5. An enforcement notice has to tell its recipients reasonably clearly what is alleged to have been done wrong and what is required to put matters right. This information has to be contained within the notice (including attachments where appropriate), without relying on the knowledge or interpretation of a recipient or on other extraneous material.
6. An enforcement notice may be a nullity (meaning that for legal purposes it does not exist) if it is missing some vital element and so is defective on its face, for example if it fails to specify a compliance period or requirements. In this instance, I find that the notice does not quite come into that category. However, the council's acceptance that the enforcement notice was invalid recognises that it was seriously flawed. A key point is that without the plans or drawings which should have been attached, the references to red-coloured markings cannot be properly interpreted (and the existence of red lines on Drawing BL002 Revision A is potentially an added source of confusion). The suggestion that because of past discussions or a previous appeal the landowner should be aware of what is required is unsatisfactory, since it lacks certainty and makes assumptions which could lead to further dispute.
7. It is clearly undesirable for this dispute to be prolonged. I have considered the possibility of adding the missing plans or re-writing the requirements so as to avoid referring to the plans. But inspectors' powers of correction or variation at appeal stage are limited, and either of those actions would involve significant changes which could cause a claim of injustice. I conclude that the enforcement notice as issued is invalid beyond correction or variation. I am therefore quashing it.

8. In these circumstances I make no comment on the grounds of appeal pleaded, since doing so could prejudice future proceedings. If the matters of dispute remain unresolved, a fresh enforcement notice is likely to be issued.
9. In the normal interests of openness, I expect the council to send a copy of this decision to those who submitted comments on the appeal, in particular neighbouring occupiers who have objected to the development, so that they may be fully aware of the situation.

Formal Decision on Both Appeals

10. I allow the appeals for the legal reasons explained above and direct that the enforcement notice be quashed.

G F Self

Inspector