



Appeal Decision

Site visit made on 10 May 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2022

Appeal Ref: APP/W0910/C/21/3289663

**Number 4 (formerly plot 1) Rock Lea Close, Barrow in Furness, Cumbria
LA13 9FA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Thane Investments Limited against an enforcement notice issued by Barrow-In-Furness Borough Council (the LPA).
 - The enforcement notice was issued on 30 November 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the development of plot 1 in a manner not in accordance with planning permission 2016/0789 approved plan RL/10 Rev J(5), subsequently amended to RL/10 Rev J (5) (E), specifically the exclusion of parking spaces along the rear boundary of the plot. (The attached photos show the land without the provision having been made).
 - The requirements of the notice are:
 1. You must provide the parking spaces as shown on the approved plans RL/10 Rev J (5) (E), by removing and repositioning the boundary fencing, excavate the ground by removing any vegetation and top soil, preparing a compacted sub-grade, installing suitable groundworks (granular sub-base material and laying course) topped with appropriate blocks of a type and colour to match the adjacent driveway, set with suitable falloff for drainage and, subject to prior written confirmation with Cumbria CC, provide a footway crossing.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(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.
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Decision

1. The enforcement notice is quashed.

The Notice

2. The notice alleges the breach of planning control as development not in accordance with planning permission ref 2016/0789 (2016 permission) and the approved plan RL/10 Rev J(5)E. The requirements are to provide the parking spaces in accordance with said plan.
3. However, the LPA states in submissions that the references are incorrect. It is said that the references should be to a later planning permission ref 2017/0796 (the 2017 permission) and the approved plan RL/10 Rev J(5)(B). The LPA state that I can correct the notice under the powers afforded to me by Section 176(1)(a) of the 1990 Act since no injustice would arise in doing so.

4. However, the appellant states that even those references suggested as correct by the LPA are not so. There is also a latter permission, ref 2018/0087 (the 2018 permission). As a result, the appellant suggests that the notice is a nullity since upon receipt of the notice, the appellant would have been uncertain about what they had done wrong and how to remedy it. However, I disagree that the notice is a nullity since it is only on proof of facts from submissions to this appeal that it is apparent the notice is defective. The allegation is not framed so hopelessly ambiguously and uncertain that the recipient could not tell in what respect they had failed to comply with a condition attached to a planning permission.
5. Nevertheless, it is clear that the notice is defective and that it ought to be corrected subject to the test of injustice. The evidence points to clear uncertainty over which planning permission the development is said to be in breach of. Moreover, there is uncertainty over which is the correct plan the development is alleged to not be in compliance with and with which the appellant would need to comply with to remedy the breach. The 2018 permission requires by condition compliance with the same plan as referred to in the notice RL/10 RevJ(5)(E) rather than RL/10 RevJ(5)(B) as suggested by the Council. I have not been provided with a copy of RL/10 RevJ(5)(B) nor indeed the 2017 permission to ascertain if there is a material difference between the two. Moreover, I saw from my site visit that the layout of the actual dwelling on Plot 1 in terms of its angled layout in relation to Plot 2 was broadly arranged as per plan RL/10 RevJ(5)(E).
6. Thus, were I to correct the allegation to refer to the 2017 permission and plan revision B as suggested by the LPA, injustice could arise to the appellant since the development may have commenced in accordance with the 2018 permission and plan revision E. The reverse is also true. Correcting to refer to the 2018 permission and plan could result in injustice to the LPA if the development has commenced in accordance with the 2017 permission. Neither party has clarified in submissions which is the permission that has been implemented and the evidence before me is insufficient for me to draw that conclusion myself. Thus, it seems to me a correction either way would result in injustice to either the appellant or LPA.
7. Indeed, there is also the possibility that none of the permissions have been implemented and the breach is development without planning permission rather than a breach of condition. Again, in the absence of sufficient evidence from either party, the matter remains uncertain and I am unable to correct the notice without injustice. Similarly, it is unclear which is the correct plan for which the notice requires compliance. Without knowing what the correct plan reference number is, I am unable to correct the notice accordingly without injustice to either party.
8. The requirements also specify a number of steps to be taken with the intention of remedying the breach of planning control by requiring the car parking spaces to be provided as shown on the approved plans. However, if the requirements are complied with, the whole development on Plot 1 will have deemed planning permission under section 173(11) of the Act and any conditions imposed on the original planning permission will cease to have effect.
9. Whilst I could correct the defect by altering the requirements such that they simply required the development of plot 1 in accordance with the terms and

conditions of the planning permission, due to the uncertainty over which is the correct planning permission, such a correction would result in injustice to the appellant and/or the LPA.

10. Moreover, whilst not in itself fatal, the notice here sets out that it appears to the LPA that there has been a breach of planning control within both section 171A(1)(a) and (b). Section 171A(1) states that a breach of planning control can be constituted by: (a) the carrying out of development with planning permission; **or** (my emphasis), (b) failing to comply with any condition or limitation subject to which planning permission has been granted. Section 173(1)(b) is clear that a notice shall state the paragraph of section 171A(1) of the 1990 Act within which, in the opinion of the LPA, the breach falls.
11. The wording of the allegation is framed that the breach constitutes a failure to comply with a condition on a planning permission. Thus, the breach of planning control would fall within section 171A(1)(b) of the Act. However, as set out above, given the uncertainty regarding which permission has been implemented, the LPA's reference to section 171A(1)(a) could lead one to conclude that the notice is directed at development without planning permission on the basis that none of the permissions referred to have been implemented and thus the conditions do not bite.
12. With the uncertainty surrounding the relevant planning permission and conditions upon which there has been a failure to comply with, the failure to specify within the notice the paragraph of section 171A(1) the alleged breach falls within further adds to the deficiencies within the notice.
13. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control nor is it clear the steps required for compliance. It therefore does not comply with the requirements of section 173(2) or section 173(3) of the 1990 Act. It is not open to me to correct the error 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.
14. In these circumstances, the appeals on the grounds set out in section 174(2)(c), (a) and (f) of the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

J Whitfield

INSPECTOR