
Appeal Decision

Site visit made on 28 July 2022

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Appeal Ref: APP/W4705/C/22/3298705
204 Gaisby Lane, Shipley BD18 1AE

- The appeal is made by Zakar Hussain under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: CORP/PCD/DS/410494) issued by City of Bradford Metropolitan District Council on 31 March 2022.
 - The breaches of planning control alleged in the notice are "the demolition of the existing two storey semi-detached house, engineering operations (excavation work) and construction of breeze block and stone structures above original ground level (determined by the garden level of the adjacent property)".
 - The requirements of the notice are as follows: -
 - "1. Demolish the unauthorised breeze block and stone structures built above original ground level
 - 2. Reinstatement the land levels to that of the adjacent dwellings ensuring the site is left clear of waste/demolition materials and secure"
 - The period for compliance with these requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (g).
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Reasons for the decision

2. The enforcement notice alleges that three breaches of planning control have occurred: (i) "the demolition of the existing two storey semi-detached house"; (ii) "engineering operations (excavation work)"; and (iii) "the construction of breeze block and stone structures above original ground level". The only evidence I have received from the appellant about these breaches is his statement on the appeal form that planning permission was granted to add an extension to the existing property, that during construction the structure became unsafe and that the building had to be demolished partially after confirmation from the building inspector and structural engineer that the building had no structural integrity. The Council have not commented on this statement during the appeal process and have not supplied any information about the breaches beyond that contained in the notice itself.
 3. The responsibility is on the appellant in this instance to make out his case on the balance of probabilities. If there is no evidence to contradict his case or make it less than improbable, case law has established that it should be accepted if it is sufficiently precise and unambiguous. The appellant's case is
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brief, but it is clear that he is asserting that he has planning permission for the excavation work and the construction works, and that the demolition work was not unauthorised in the circumstances in which it occurred. In the absence of any further material from the Council, there is no evidence to contradict the appellant's case or make it less than probable. I have therefore accepted it, allowed the appeal on ground (c) and quashed the notice. Ground (g) no longer falls to be considered.

4. If I had not reached this conclusion, issues would still have arisen in connection with the wording of the notice. Firstly, the notice alleges a breach consisting of the demolition of the house, but it does not specify any steps required to remedy that breach or to remedy any injury to amenity caused by that breach. Secondly, the reasons given for issuing the notice state that the engineering works are "detrimental to the structural stability and safety of the adjacent residential dwellings and land to the detriment of residential amenity", but the step required in relation to the engineering works, namely to "Reinstate the land levels to that of the adjacent dwellings", would not remedy that injury to amenity because the structural stability and safety of the adjoining semi-detached house has been impaired throughout at all levels.

D.A.Hainsworth

INSPECTOR