



Appeal Decision

Site visit made on 9 August 2022

by D Boffin BSc (Hons), DipTP, MRTPI, Dip Bldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 6th September 2022

Appeal Ref: APP/M5450/C/21/3269947

Land adjacent to 51 Tudor Road, Harrow, HA3 5PQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal is made by Mr Kasthoori Satkunarajah against an enforcement notice issued by London Borough of Harrow.
 - The notice was issued on 2 February 2021.
 - The breach of planning control as alleged in the notice is:
Without planning permission:
 1. The Unauthorised Use of the Land for storage and sale of motor vehicles (Sui Generis) ("the Unauthorised Use")
 2. The unauthorised construction of single storey wooden and Perspex canopy on the Land as shown hatched on the attached plan ("the Unauthorised Development").
 - The requirements of the notice are:
 1. Ceased the Unauthorised Use
 2. Remove from the Land all vehicles, materials, tools and paraphernalia associated with the Unauthorised Use.
 3. Demolish the Unauthorised Development.
 4. Remove from the Land all material and debris arising from compliance with the aforementioned requirements of the notice.
 - The period for compliance with the requirements is: 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the 1990 Act. 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 1990 Act.
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Decision

1. The enforcement notice is quashed.

Preliminary Matters

2. The appeal was initially lodged on grounds (a), (d), (f) and (g) as set out in section 174(2) of the 1990 Act. The ground (d) appeal was subsequently withdrawn by the appellant. The appeal is therefore proceeding on grounds (a), (f) and (g).

Applications for costs

3. An application for costs was made by Mr Kasthoori Satkunarajah against the London Borough of Harrow. This application is the subject of a separate decision.

The Notice

4. The requirements for the content of an enforcement notice are prescribed in section 173 of the 1990 Act and Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the

regulations). It says: *'An enforcement notice issued under section 172 of the Planning Act shall specify— (a) the reasons why the local planning authority consider it expedient to issue the notice; (b) all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice; and (c) the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise'.*

5. Section 4 of the notice sets out 4 reasons for the notice. Reasons 2 and 3 state what harm the use of the land and the operational development are considered to result in. Within those reasons the Council has cited a number of development plan policies, including policies from the London Plan (2016), Harrow Core Strategy and Harrow Development Management Policies. The appellant considers that the London Plan (2016) policies were not relevant at the time the notice was issued as the London Plan (2021) was then in force. In addition he considers that additional policies in the development plan are relevant to the case.
6. I acknowledge that those reasons could have been written with greater clarity with regards to the specific circumstances of the development and the alleged harm to the character and appearance of the area and the living conditions of neighbouring occupiers. Moreover, those reasons do not make any reference to policies in the London Plan (2021) – whether adopted or emerging policies. The Council would have been aware of the Secretary of State's letter of 29 January 2021 in relation to the Mayor of London's intention to publish the London Plan (2021). However, the London Plan (2021) was published and came into force on the 2 March 2021 after the notice was issued. Furthermore, that section of the notice sets out the policies which the Council considered were relevant to the decision to issue the enforcement notice. As such the development plan policies it considered the development conflicts with are cited. Section 4 of the notice enables the recipient to understand why the Council considered it expedient to issue the enforcement notice and the development plan policies it considered were relevant and overall I do not consider that 4(a) or 4(b) of the regulations have been breached in this case.
7. Regulation 4(c) of the regulations stipulates that a notice shall specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. In this case the enforcement notice specifies that the land to which it relates is *'Land Adjacent to 51 Tudor Road, Harrow, HA3 5PQ shown edged with a solid red line on the annexed plan ("the Land")*. However, in error, the plan was not appended to the enforcement notice.
8. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. The appellant maintains that as no plan has been attached to the notice or provided separately, it is not possible to identify the land subject of the enforcement notice precisely and the notice is invalid as it cannot be corrected without injustice to the appellant. The Council considers that the appellant has described the site and the canopy in his evidence and knows where it is and therefore no confusion has arisen.
9. I observed on site that cars are stored on a piece of land that is to the rear of 51 Tudor Road (No 51) and that that land extends to the rear of 49 Tudor Road (No 49) as well. There were around 20 cars, in close proximity to each other,

on that land. Moreover, it was clear that a small outbuilding with an attached timber and plastic sheeting canopy, to the rear of No 49, was being used in association with the alleged use. Gated access to the site is from Leighton Road and its frontage to that road is fenced. The ground floors of No 51 and No 49 are commercial units with the first floors being in residential use.

10. The precise boundaries of the land to which a notice relates can be, and in most cases are (as it is considered best practice), specified by reference to a plan. However, the regulations include the words '*or otherwise*' therefore a plan does not have to be provided if the land is described in a way sufficient to identify it. As an example, if the alleged breach related to an outbuilding in the rear garden of a dwelling it would be, in my judgement, sufficient to specify the precise boundaries of that property by giving its address - namely the street number and name. Nevertheless, in this case the site where the alleged breach appears to be occurring is to the rear of No 51 and No 49. Whilst this could in part be taken to be land adjacent to No 51 there is no reference to No 49 contained within the land specified within section 2 of the notice.
11. I asked both parties for their comments on whether the notice could be corrected, without injustice to them, by:
 - Adding the words '49 and' between 'to' and '51' within section 2 of the notice. The deletion of the wording 'shown edged with a solid red line on the annexed plan' also within section 2 of the notice.
 - To reflect the definition of development within section 55 of the 1990 Act the addition of the words 'material change of' between 'unauthorised' and 'use' within paragraph 1 of section 3 of the notice.
 - The deletion of the wording 'as shown hatched on the attached plan' within paragraph 2 of section 3 of the notice.
12. The appellant's response was that he had no objection to the correction suggested in the second bullet point. However, he considers that the corrections in bullet points 1 and 3 would be tantamount to altering the address and extending the land noted in the enforcement notice. As a result, he has stated that those corrections would cause injustice to those who had interest in the "extended" part of the land at the time of the issuance of the notice. The Council have no objection to the corrections cited above.
13. I acknowledge that the appellant's evidence describes the site at paragraphs 1.0 and 1.1 of his statement of case and within that description he states: '*the northeast side of the site adjoins the rear yards of the shops at 49 and 51 Tudor Road*'. He also describes the canopy at paragraph 6.1 and includes measurements of that canopy. It is apparent that the appellant is aware of where the alleged use is occurring and where the canopy is.
14. Nevertheless, I do not consider that 'land adjacent to 51 Tudor Road ..' specifies the precise boundaries of the land affected by the notice as it is also adjacent to No 49 as well. Moreover, there is no fence or wall between where the cars are stored and the rear elevation of No 49 and access into the ground floor of No 49 appears to be possible via the rear elevation. There was a shelving unit abutting its rear elevation and the items on the shelves appeared to be associated with the alleged use, but that shelving unit may be within an area that serves as the rear yard of one or more of the commercial units within

No 49. Without the precise boundaries of the site being specified it is ambiguous if that shelving unit or other items would be required to be removed under requirement 2 of the notice. It is also ambiguous if the boundaries of the land affected by the notice would adjoin the rear elevation of No 49 or at another point.

15. If the wording '49 and' was added to the wording of section 2 of the notice that would effectively extend the land to which the notice relates, in the absence of a plan. That would have the effect of making the notice more onerous and the appellant may have wished to raise other grounds of appeal had the boundaries been identified precisely. As such, correcting the notice would cause injustice to him. Moreover, the addition of that wording would not overcome the ambiguity of where the precise boundary would fall in relation to the rear elevation of No 49.
16. The notice is therefore defective due to the absence of a plan and the ambiguity described above and I do not consider it to be correctable, which renders it invalid.

Conclusion

17. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the precise boundaries of the land where the breach of planning control is alleged to have taken place. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
18. In these circumstances the appeal under grounds (a), (f) and (g) as set out in section 174(2) of the 1990 Act and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered. In view of this, the planning merits of the proposal are not before me and I cannot take the related comments from interested people, who have objected to the development, into account.

D Boffin

INSPECTOR