



Appeal Decision

Site visit made on 12 July 2022

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2022

Appeal Ref: APP/P4415/C/22/3290037

Land at Breamore House, Dog Kennels Lane, South Anston S26 6NG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jake Speight against an enforcement notice issued by Rotherham Metropolitan Borough Council.
 - The notice was issued on 2 December 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a front boundary wall and pillars.
 - The requirements of the notice are to:
 - (i) Demolish the front boundary wall and remove from the site all resultant demolition materials, as edged blue on the plan attached to the notice; OR
 - (ii) Reduce the height of the wall to comply with the approved plans under (RB2019/0890).
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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. S173(2) of the 1990 Act as amended states that an enforcement notice complies with s173(1)(a) if it 'enables any person on whom a copy of it is served to know what those matters are' being the matters alleged to constitute the breach. The test established in Case law¹ is whether the enforcement notice tells the recipient fairly what they have done wrong and must do to remedy it. S173 (3) makes clear that the enforcement notice shall specify the steps required to be taken to achieve wholly or partly any of the purposes set out in s173(4). In the light of *Miller-Mead* it established that the recipient of an enforcement notice is 'entitled to.... find out from within the four corners of the document what he is required to do or abstain from doing'.
3. S176(1) states an enforcement notice may be corrected if there is no injustice to the appellant or the local planning authority.
4. The enforcement notice alleges "without planning permission, the unauthorised erection of a front boundary wall and pillars". As I saw at the site visit there is a front wall which incorporates three pillars and gates. One pillar directly adjoins a single gate for pedestrian access serving the property, supported by a further pillar that connects with a second gate to a vehicular access gate and a

¹ *Miller-Mead v MHLG* [1963] 2 WLR 225

- third pillar. The front boundary wall, pillars and gates interconnect along the whole of the front boundary.
5. The requirement set out in paragraph 5.1 of the notice is "Demolish the front boundary wall (identified in blue on the site plan) and remove from the site all resultant demolition materials".
 6. The site plan has a blue line which extends across the full width of the frontage of the property. The blue line includes the wall, pillars and gates in its length. The allegation, requirement and blue line on the enforcement notice plan are inconsistent resulting in ambiguity.
 7. If the Council were not seeking the removal of all the wall and pillars as shown on the blue line of the plan, the extent of the required removal should have been clearly marked on this plan. Moreover, the requirements only require the removal of the wall and not the pillars. The requirements do not follow on from the alleged breach of planning control. The reasons for issuing the enforcement notice refer at times to the wall and pillars and at other times to just a boundary wall.
 8. In the light of the inconsistencies and ambiguity in the enforcement notice I have considered whether I could correct the notice. However, it is not clear to me whether the Council is seeking to attack the whole boundary treatment identified by the blue line on the plan or only the wall and pillars, and not the gates, as set out in the allegation, or just the wall and not the gates or pillars as set out in the requirement at paragraph 5.1 and 5.2. I therefore cannot correct the notice with any certainty as to what the Council meant to achieve. To correct the notice would therefore be likely to lead to injustice or prejudice to the Council.
 9. The appellant is clearly seeking in his ground (a) appeal planning permission for the whole front boundary treatment i.e., the wall, pillars and gates. However, as the allegation is worded the deemed application would only relate to the wall and pillars i.e., not the gates. This also demonstrates that the appellant is not clear on what the notice seeks to attack.
 10. If I were to correct the notice to include within the allegation the gates this would address the deemed planning application issue in terms of what the appellant is seeking. However, I am not clear of the Council's intentions in respect to requirements if the allegation were to be widened. This would likely result in prejudice and injustice to either or both parties.
 11. The requirement at 5.2 relates to reducing the height of the wall to comply with approved plans RB2019/0890. The Council state the permission has never been implemented and the wall remains in situ as originally built. This permission has now lapsed and could not lawfully take place.
 12. Nonetheless, from my inspection of the site, I saw that the pillars and gates which have been constructed were not consistent with approved plans RB2019/0890. The requirement at 5.2 only requires the height of the wall to comply with the plan and not the pillars. Requirement 5.2 is therefore inconsistent with the allegation and the reasons for service of the enforcement notice.

13. It is open to the Council to serve a further notice which clearly sets out the nature of the breach and the requirements, should it consider it expedient to do so, subject to the provisions of Section 171B(4) of the 1990 Act.

Conclusion

14. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. 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.
15. In these circumstances, the appeal on the ground (a) set out in section 174(2) 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 does not fall to be considered.

K A Taylor

INSPECTOR