



Appeal Decision

Site visit made on 18 October 2022

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2022

Appeal Ref: APP/R4408/C/22/3303097

34 Highstone Avenue, Worsbrough Common, Barnsley S70 4LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Terrence Robinson against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The notice was issued on 17 June 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey rear extension and outbuilding including a raised ground level and the erection of a retaining wall.
 - The requirements of the notice are:
 - (i) Demolish the unauthorised extension and outbuilding as specified in paragraph 3;
 - (ii) Remove all rubble and materials arising from compliance with paragraph 5(i);
 - (iii) Return the land to its original state, prior to the breach of planning control taking place including restoring the land to the pre-existing level and demolishing and removing the retaining wall to the raised land level.
 - The period for compliance with the requirements is: Three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (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. 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. 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). 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.
3. The alleged breach at Section 3 of the notice, as drafted, appears to refer to four elements of operational development, being: (i) a '*single storey rear extension*'; (ii) an '*outbuilding*'; (iii) a '*raised ground level*'; and (iv) '*the erection of a retaining wall*'. However, this description as drafted is largely inconsistent with what I saw during my site visit as I set out below.

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

4. With regard to element (i) above, I saw that a single storey rear extension to the house has been constructed in the form of a raised patio partially enclosed by brick walls on 3 sides. Its paved floor area is at a level which provides access via patio doors into the house, and provides access to the garden via 2 steps. The extension wall where it projects alongside the shared boundary with No.32 Highstone Avenue (No.32) is relatively high, with the other 2 adjoining sides at a lower level with coping stones on top. From what I observed on site I saw that the extension, by itself, appears to be consistent with element (i) of the breach as drafted. However, I am unclear as to whether the *included 'raised ground level'* in element (iii) and/or the *'erection of a retaining wall'* in element (iv) also form any part of this extension.
5. With regard to element (ii) above, a small outbuilding has been constructed at the far end of the rear garden which links to a larger pre-existing one. The notice does not make clear whether it attacks this smaller building or the whole structure as extended. Additionally, it is again unclear whether the *included 'raised ground level'* in element (iii) and/or the *'erection of a retaining wall'* in element (iv) also refer to any part of this building(s).
6. With regard to element (iii) above, the physical extent of any area of *'raised ground level'* is not identified in the notice. As such, as set out previously, there is no certainty as to whether or not it was intended to refer to all of the rear garden area, including the steps into the extension, and/or the land under the extension and/or under the outbuilding/s. Equally confusing, *'raised ground level'* potentially could refer to the elevated floor level of the extension, although if that were the case it would mean that elements (i) and (iii) have ambiguous dual descriptions as both *'extension'* and a *'raised ground level'*.
7. With regard to element (iv) above, I saw that there are considerable varying levels between the appeal property and both No.32 and No.36 Highstone Avenue (No.36). There are two boundary walls on either side of the appeal property, shared with No.32 and No.36. These vary in height, incorporating fencing and pillars, and are connected to the outbuildings and extension. However, only a *'retaining wall'* (singular) is referred to in the allegation but again is not identified in the notice.
8. The requirement set out in paragraph 5(iii) of the notice is *"Return the land to its original state, prior to the breach of planning control taking place including restoring the land to the pre-existing level and demolishing and removing the retaining wall to the raised land level"*. Since the allegation is wholly unclear, (for example in terms of the extent and location of raised ground levels and retaining walls), equally so therefore is trying to understand precisely what is required to be done in terms of a remedy.
9. Overall, contrary to the PPG advice², the notice and its attached plan do not indicate with any precision where and to what extent individual elements of the alleged breach are located. Appendix A to the notice contains 4 unmarked photographs taken from the property at No.32. However, they simply show general views of the appeal site and hence do not assist in clarifying the precise nature of the allegation and requirements as I have set out with regard to elements (i) to (iv) above.

² Planning Practice Guidance Paragraph: 019 Reference ID: 17b-019-20180222 (model enforcement notice)

10. Notwithstanding the above, the appellant has sought to understand the alleged breach and requirements by looking at the reasons for issuing the notice at Section 4. Those reasons refer to an earlier refused planning application³ for development which included a conservatory. However, while there may be some similarities between the refused scheme and this one, they are not the same. A ground (a) appeal can only relate to the development subject of the notice, which does not include a conservatory. This also demonstrates that the appellant is not clear on what the notice seeks to attack. In any event, an alleged breach and requirements in a notice should be clear by themselves without having to seek to understand them from the reasons for issuing the notice.

Conclusion

11. 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. Furthermore, I am unable to understand what corrections might be appropriate without them resulting in injustice to any party. As such, I am unable to correct the notice in accordance with my powers under section 176(1)(a) of the 1990 Act as amended. The enforcement notice is invalid and will be quashed.
12. 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 as amended.
13. In these circumstances, the appeal on the grounds (a), (d) and (f) 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 do not fall to be considered.

K A Taylor

INSPECTOR

³ 2020/0811