



Appeal Decision

Site visit made on 30 January 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2023

Appeal Ref: APP/C5690/C/21/3288197

Land at 2 St Fillans Road, London SE6 1DG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mark Chambers against an enforcement notice issued by the Council for the London Borough of Lewisham.
- The notice was issued on 1 December 2021.
- The breach of planning control as alleged in the notice is the erection of gates on the boundary exceeding the limitations of permitted development and allowing vehicular access to the street from the rear garden, use of rear garden for scrap and material storage.
- The requirements of the notice are to:
 1. Remove the boundary treatments and roller shutters fronting Elmer Road in their entirety.
 2. Remove all of the materials, debris and scrap metal stored on site and dispose of them in the appropriate way.
 3. Cease the use of the site for the storage of any commercial materials, waste materials, debris and scrap metal
- The period for compliance with the requirement is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) 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.

Decision

1. The enforcement notice is quashed.

Preliminary Matters

2. The appellant's name is spelt 'Mark' on the appeal form which was submitted by his agent. However, in correspondence directly from him he spells his forename 'Marc'. I have assumed that the latter is correct and have determined the appeal accordingly.
3. The appellant submitted a copy of the enforcement notice which was issued on 1 December 2021. However, the copy provided by the Council is dated 2 November 2021. In response to a query by the Planning Inspectorate the Council has advised that the notice dated 2 November 2021 was returned as undelivered and this led to the issue of the notice dated 1 December 2021. There has been no comment from the appellant. I shall, therefore, determine the appeal on the basis that it relates to the notice dated 1 December 2021 as set out in the banner.
4. The site visit was arranged as an Accompanied Site Visit (ASV) and the Council was in attendance at the specified date/time. However, the appellant did not

attend, nor did he send a representative. For that reason, the site visit was aborted.

5. The appellant has subsequently advised that he was not informed about the site visit, and he has raised concerns with the Planning Inspectorate. This matter will be the subject of separate correspondence.

The Notice

6. An Enforcement Notice must meet the specifications set out in section 173 of the Town and Country Planning Act 1990 (the Act) which sets out the contents and effect of a notice. Defects which make a notice invalid generally fall into two categories, either the notice is null because it is defective on its face, or it is flawed in some way.
7. In this case the notice is not defective on its face and consequently it is not a nullity. However, the notice does contain a number of flaws. Section 176 of the Act allows the correction or variation of a notice in such circumstances subject to the test that such changes to the notice will not cause injustice to the appellant or the local planning authority.
8. Section 173(2) of the Act says that a notice complies with section 173(1)(a) if it 'enables any person on whom a copy of the notice is served to know what those matters are' being the matters alleged to constitute the breach. Furthermore, caselaw (*Miller Mead v MHLG* [1963] 1 All ER 459) has established that the notice should tell the recipient fairly what they have done wrong and what must be done to remedy it.
9. The notice refers to 'use of the rear garden for material storage' in the allegation and cessation of the 'use of the site for the storage of any commercial materials, waste materials, debris or scrap metal'. However, the notice does not refer to an allegation of a material change of use (MCU).
10. The notice relates to the building at 2 St Fillan's Road and the land around it, that is the 'site' to which the notice refers. The Council's evidence in the form of its Planning Enforcement Report points to the building being in residential use which would mean that a MCU has occurred and that the site is in a mixed use as residential/scrap and material storage use. However, the notice does not clearly set out that that is the breach which the Council is concerned about and the reference to use of the rear garden for scrap and material storage is confusing in this context. To that extent the notice does not enable any person on whom a copy of it is served to know what those matters are.
11. The evidence includes a statement by the occupier of the house. He says 'as that part of the property isn't covered by our tenancy, it was clear that the notice was not directly intended for us'. However, the notice relates to the whole site and were I to correct the notice to refer to a mixed use, the occupier of the house could be disadvantaged because he would be unable to submit any arguments to the appeal.
12. If a MCU to mixed use has occurred as inferred by the Planning Enforcement Report, the immunity period is 10 years not 4 years as set out in the Council's reasons for serving the notice. The appellant has appealed under ground (d), and he has based his case on a four year immunity period. He has not had the opportunity to bring forward evidence over a longer time period.

13. The requirements of the notice should follow logically from the allegation. The notice does not achieve this. The allegation refers to the 'erection of gates on the boundary exceeding the limitations of permitted development'. However, requirement 1 refers to removal of 'the boundary treatments and roller shutters fronting Elmer Road'. In this respect the notice is not clear about which boundary the 'gates' have been erected on and whether the boundary treatments which accord with permitted development limitations can be retained.
14. Furthermore, the description 'gates' in the allegation is not the same as 'roller shutters' in requirement 1 giving rise to confusion about which boundary feature is the subject of the notice.
15. The allegation also refers to the 'gates' allowing access to the street, but the requirements do not include the removal of the access. This gives rise to a lack of clarity regarding whether the Council regard the formation of an access as an act of development.
16. The notice also does not refer to the breach as being activities carried out 'without planning permission' and the requirement to 'dispose of them [the materials, debris and scrap metal] in an appropriate way' lacks precision. However, these parts of the notice could be corrected without giving rise to injustice to the parties.
17. Taking all of these points together I find that the notice does not tell the recipient of it fairly what they have done wrong and what must be done to remedy it. As it stands the notice lacks clarity and consistency. If I were to correct the notice this would give rise to injustice to the appellant and the Council, and potentially the occupier of the house. It follows that the notice is invalid and not correctable.

Conclusion

18. 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.
19. In these circumstances, the appeal on the grounds set out in section 174(2) (a) and (d) 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.
20. It was unnecessary for me to access the site in order for me to reach the conclusions which I have in respect of the validity of the notice. Consequently, it was unnecessary for the ASV to be rescheduled and the appellant has not been prejudiced as a result of not being present at the site visit.

Sarah Dyer

Inspector