



Appeal Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 16 February 2023

Appeal Ref: APP/C4615/C/22/3299765
65 Lodge Crescent, Dudley DY2 0HG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Kim Smith against an enforcement notice issued by Dudley Metropolitan Borough Council.
 - The notice was issued on 27 April 2022.
 - The breach of planning control as alleged in the notice is without planning permission, and within the last four years the erection of a single storey annex building, single storey garage building and raised decked platform on the Land.
 - The requirements of the notice are
 - i. Demolish in its entirety and remove from the land the annex building identified as 'Building A' in Appendix 2 attached to this notice.
 - ii. Demolish in its entirety and remove from the land the raised Decked Platform positioned adjacent to the annex building (Building A) and as identified in Appendix 2 attached to this notice.
 - iii. Remove from the Land and lawfully dispose of all building materials, debris and other waste arising from works carried out in compliance with items i, ii and iii above
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) 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.

Reasons

2. The allegation refers to the erection of an annex building, a garage building and a raised decked platform. There is no reference to residential use in the allegation and the use of the word "annex" implies that the building is being used in connexion with another building. However, the first reason in the notice contradicts that view and states that the annex building constitutes a separate dwelling. Despite five reasons for issuing the notice, the actual use of the annex building is not addressed.
3. Reason 4 refers to the "development" not providing sufficient parking resulting in highway concerns. The development is not specifically defined in the notice but would appear to include the annex building and the garage building but not the original dwelling. The Council's report of the 28 June 2022 assessed the original dwelling and the annex together and stated that sufficient level of parking would be provided. The Council needs to be clear as to whether the

- building is an annex or a separate dwelling in residential use in order to assess parking issues.
4. The Council has suggested that the current wording be amended to “erection of a single storey building” without any reference to residential use but maintains reliance upon reason 1 which refers to a separate dwelling. The building is not unoccupied and it should be clear in the notice what exactly is alleged. The building is either being used in association with the main dwelling or as a separate dwelling. The reasons for issue would then address both the structure itself and the use. There is no reference at all in the reasons to use, incidental or otherwise.
 5. Whilst I do have powers to correct the notice under section 176(1) of the 1990 Act, I do not know whether the Council is alleging that the building is in use as a annex or a self-contained dwelling. The appellant lodged her appeal upon ground (a). She later added ground (c) as the appellant believes that the annex building benefits from permitted development rights. However, if the allegation is that the building is in separate residential use, the appellant is likely to have pursued ground (b).
 6. In addition, the wording of the allegation under ground (a) is crucial as the allegation forms the deemed planning application for planning permission. The amended wording as suggested by the Council does not overcome the current uncertainty with the notice and the mismatch between the allegation and the reasons for issuing the notice. Any amendments to the wording are in any event likely to cause injustice when the appellant maintains that the building is not a separate dwelling.

Conclusion

1. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or reasons for issuing the notice. 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. In these circumstances, the appeal on the ground 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.

E Griffin

INSPECTOR