



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2023

Appeal Ref: APP/Y0435/C/22/3290738

83 Stratford Road, Wolverton, Milton Keynes MK12 5LU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Neil Briggs of NB Property Holdings 119 High Street Ltd against an enforcement notice issued by Milton Keynes Council.
 - The notice was issued on 24 December 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of part of the building and operational development comprising of the following:
 - i) Part change of use of the ground floor into a mixed use as self-contained flat and Class E Commercial use
 - ii) Unauthorised subdivision of the first floor to two self-contained flats.
 - iii) The installation of a rear external staircase has not been built in accordance with the approved plans as per planning permission 20/01678/FUL, drawing ref: 0320-SK-01 and;
 - iv) The unauthorised removal of chimney and installation of skylights to rear roof slope.
 - The requirements of the notice are:
 - (i) Cease the use of the part of the ground floor that is currently being used as a residential unit/flat
 - (ii) Remove the wall which has been erected instead of the approved railing and rebuild in accordance with planning application ref: 20/01678/FUL and approved drawing/s no 0320- SK-01.
 - (iii) Rebuild the external staircase in accordance with planning application ref: 20/01678/FUL and approved drawing/s no 0320-SK-01.
 - (iv) Remove the subdivision of the first floor that has created two separate flats to one flat, in accordance with planning application ref: 20/01678/FUL and approved drawing/s no 0320-SK-01.
 - (v) Rebuild the chimney to match the chimney prior to demolition as per planning application ref: 20/01678/FUL and approved drawing/s no 0320-SK-01.
 - (vi) Permanently remove the unauthorised skylights as per the retrospective refusal in planning application 21/03036/FUL, drawing ref: 0320-SK-011.
 - (vii) Permanently remove all rubbish and debris from the site created from compliance with steps (i) to (vi) above.
 - The period for compliance with the requirements is six 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.
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Decision

1. Since the notice is found to be a nullity, no further action will be taken in connection with the appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act as amended.

Reasons

2. Section 173 of the Act and the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 set out what a notice shall include. S173(10) states that an enforcement notice shall specify such additional matters as may be prescribed and these are set out under ENAR4¹ and include (a) the reasons why the local planning authority consider it expedient to issue the enforcement notice; (b) all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice. It is not enough to say that there has been a breach of planning control.
3. The Council in section four of the notice set out that it is expedient and in the public interest to issue an enforcement notice in respect of the alleged breaches of planning control. However, whilst they list the policies in the development plan which they consider relevant to the decision to issue the enforcement notice, they do not specify reasons why they considered it expedient to issue the notice.
4. Paragraphs 4.1(i) and 4.2(i) – (vi) set out requirements, which are repeated in section five of the notice (what you are required to do). However, there is no explanation of the alleged harms and why the developments are contrary to those policies listed. It is therefore apparent on the face of the notice itself that it does not comply with s173(10) of the Act and ENAR4(a).
5. Defects in enforcement notices fall into two main categories: those that make it a nullity and those that may make it invalid. In the former there is in effect no notice at all and therefore nothing that can be corrected or, indeed, form the basis of an appeal.
6. As the enforcement notice fails to specify the reasons why the local planning authority considered it expedient to issue the enforcement notice, this renders the enforcement notice a nullity as it does not comply with s173(10) and ENAR4(a). Therefore, the notice is of no legal effect, and it could not be amended under s176, since that power could only apply to a notice which was not a nullity.
7. However, the Council, by virtue of section 171B(4)(b) of the 1990 Act is not precluded from taking further enforcement action in respect of these matters.

Conclusion

8. I conclude that the notice is a nullity. In these circumstances, the appeal on the ground set out in section 174(2)(c) 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.

Felicity Thompson

INSPECTOR

¹ The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002