
Appeal Decision

Site visit made on 27 February 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 28 MARCH 2023

Appeal Ref: APP/W0530/C/22/3295377

"Byeways", Station Road, Harston, Cambridge CB22 7NY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Liming Deng against an enforcement notice issued by South Cambridgeshire District Council.
- The enforcement notice was issued on 28 February 2022.
- The breach of planning control alleged in the notice is failure to comply with condition No 2 of a planning permission Ref 21/02100/HFUL granted on 16 July 2021.
- The development to which the permission relates is Part single, part two storey rear extensions including erection of a front boundary wall and gated entrance (part retrospective). The condition in question is No 2 which states that: The development hereby permitted shall be carried out in accordance with the approved plans as listed on this decision notice. The notice alleges that the condition has not been complied with by the construction of the development in breach of approved drawings SC-BY-P-04 and SC-BY-P-02 received by the Council on 6th May 2021.
- The requirements of the notice are: Construct the development in accordance with approved drawings SC-BY-P-04 and SC-BY-P-02 received by the Council on 6th May 2021.
- The period for compliance with the requirements is six (6) 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 is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The enforcement notice is quashed.

The Notice

1. The allegation in the enforcement notice is a breach of the approved plans condition in a planning permission previously granted at the appeal property. The notice states that this condition has been breached by 'the construction of the development in breach of approved drawings SC-BY-P-04 and SC-BY-P-02'.
2. The allegation does not though specify the extent of the alleged departures from the approved plans. The reasons for issuing the notice refer to the 'development as built' having a detrimental effect on the existing property and appearing 'more dominant on the elevation facing the countryside'. The reasons then go on to reference discrepancies as between a dormer window being constructed and that shown in approved plans.
3. However, it would appear from representations including from third parties, that there are a number of other departures from approved plans. In this context, even looking beyond the notice at the Council's own representations,

there is a lack of specificity as to the extent of the alleged departures from the approved plans, and indeed the extent to which the Council considers other departures to be objectionable. Even with the benefit of representations from the parties and of a site visit, the position in these regards is not unequivocal.

4. It is in theory open for me to correct the notice to clarify the allegation as regards the alleged breach of the approved plans condition. However, in my view, there is a clear risk of injustice by my doing so, particularly as regards the ground (a) appeal, given that it is unclear on the available evidence as to how the Council considers that the approved plans have been departed from, and in which regards such departures are considered objectionable.
5. I will therefore quash the enforcement notice. This will give the Council the opportunity to consider the position and to decide whether to exercise its powers under section 171B(4) of the 1990 Act to take further enforcement action.

Conclusion

6. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. 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 may be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the grounds set out in section 174(2)(a) and (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.

Formal Decision

7. The enforcement notice is quashed.

V Bond

INSPECTOR