



Appeal Decision

Site visit made on 9 May 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2023

Appeal Ref: APP/V2004/C/22/3296435

14 Oban Avenue, Hull HU9 3NJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
 - The appeal is made by Mr Jeffrey Scott against an enforcement notice issued by Kingston-Upon-Hull City Council.
 - The notice was issued on 28 February 2022.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of an outbuilding within 2m of a boundary which exceeds permitted development height of 2.5m.
 - The requirement of the notice is to reduce the overall height of the outbuilding to no more than 2.5m in height to comply with permitted development limits.
 - The period for compliance with the requirement is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) 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. 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 (LPA) should consider reviewing the register kept under section 188 of the Act.

The Enforcement Notice

2. Section 172(1)(b) of the Act states that the LPA may issue a notice where it appears to them that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
3. Section 173(10) of the Act states that a notice shall specify such additional matters as may be prescribed. The additional matters are prescribed in the Town and Country Planning (Enforcement Notices and Appeals (England) Regulations 2002 (the ENAR).
4. Regulation 4(a) of the ENAR states that a notice shall specify the reason why the LPA considers it expedient to issue the notice. Regulation 4(b) states that a notice shall specify all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice.
5. The LPA's reasons for issuing the notice set out in paragraph 4 of the notice are simply statement of facts and the reasons do not set out how or why the LPA believe the building to be harmful and in conflict with development plan policies or any other material considerations.

6. Paragraph 4 of the notice states the alleged breach has occurred within the last four years. It goes on to state that the building is in breach of the Town and Country Planning (General Permitted Development) (England) Order 2015, being within 2m of a boundary and exceeds 2.5m in height. Thereafter, paragraph 4 refers to the refusal of a retrospective planning application 20/1239/FULL that was not appealed. There is nothing within the notice which allows the recipient to understand from that contained within its four corners, why the LPA consider it expedient to take enforcement action.
7. I therefore consider that the notice fails to meet the statutory requirements of section 173(10) of the Act and Regulation 4(a) of the ENAR. I find as a result that the notice is a nullity.

Conclusion

8. I conclude that the notice is a nullity. In these circumstances, the appeal on the grounds set out in section 174(2)(a) and (g) of the Act and the application for planning permission deemed to have been made under section 177(5) of the Act does not fall to be considered.

Chris Baxter

INSPECTOR