



Appeal Decision

Site visit made on 4 May 2023

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

an Inspector appointed by the Secretary of State

Decision date: 14TH JUNE 2023

Appeal Ref: APP/W0530/C/22/3300454

Land at 10 Shirley Close, Milton, Cambridge, CB24 6BG

- 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 Dilawar Anwar Khan against an enforcement notice issued by South Cambridgeshire District Council.
- The enforcement notice was issued on 10 May 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the creation of a new dwelling.
- The requirements of the notice are (i) Create a functional working link between the existing the dwelling known as 10 Shirley Close edged red on the attached plan and the unauthorised dwelling known as 10A Shirley Close" edged blue on the attached plan by the installation of an internal door as shown on the attached plan; (ii) Remove the fence to the rear of the unauthorised dwelling known as 10A Shirley Close which currently separates the unauthorised development from the existing dwelling known as 10 Shirley Close.
- 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 (f) 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.

Preliminary Matter

1. I have taken the appellant's name detailed in my banner heading from the appeal form; the appellant's statement in contrast refers to the appellant as 'Alpha (UK) Enterprise Limited'.

The Notice

2. Under section 176(1) of the Town and Country Planning Act 1990 (1990 Act), wide powers are available to me to correct any defect, error or misdescription in the enforcement notice, or to vary the terms of the enforcement notice. This is provided that the correction or variation would not cause any injustice to the appellant or the local planning authority.
3. The allegation does not precisely describe the development alleged to be in breach of planning control. It refers to 'creation of a dwelling' and of itself is not clear whether this refers to operational development or a material change of use per s55 of the 1990 Act. From the reasons in the notice and from representations submitted, it appears that the intention was to allege a material change of use. I consider that I could correct the allegation without

injustice since there is nothing to suggest any confusion as between the parties as to the intention in this regard.

4. However, to make such a correction reveals another more fundamental problem with the notice. As outlined, the allegation was intended to refer to a material change of use to a separate dwelling. The requirements though do not stipulate that the use as a separate dwelling ceases. As such correcting the allegation would bring into operation s173(11) of the 1990 Act.
5. S173(11) states that: where: (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with - then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A of the 1990 Act in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
6. Since the notice as corrected would allege a material change of use, it 'could have required' the unauthorised use to cease - but the requirements do not stipulate this. As such, if and when the requirements of the enforcement notice are complied with, planning permission would be treated as granted for the unauthorised use. If I were to correct the enforcement notice so as to introduce a requirement that the alleged use is ceased, this would widen the scope of the enforcement notice and make it more onerous, thus causing injustice to the appellant.
7. It would therefore be appropriate to quash the enforcement notice and doing so would give the Council the opportunity to decide whether to exercise its powers under s171B(4) of the 1990 Act to take further enforcement action.

Conclusion

8. For the reasons given above, I conclude that the enforcement notice does not properly specify with sufficient clarity 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.
9. 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 (f) 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

14. The Enforcement Notice is quashed.

V Bond

INSPECTOR