



# Appeal Decision

Site visit made on 31 August 2023

**by Diane Lewis BA(Hons) MCD MA LLM MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date 04 September 2023**

## **Appeal Ref: APP/B5480/C/22/3306636**

### **The land known as 162 Heath Park Road, ROMFORD, RM2 5XL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ashworth Homes against an enforcement notice issued by the London Borough of Havering.
- The notice, numbered ENF/202/21, was issued on 9 August 2022.
- The breach of planning control as alleged in the notice is Without planning permission, operational development through the construction of a decked seating area with balustrades to the front elevation.
- The requirements of the notice are to:
  - i. Demolish/remove the decking and balustrades to the front elevation, and
  - ii. Remove all other debris, rubbish or other materials accumulated as a result of taking step (i) above.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the ground (a) set out in section 174(2)(a) 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. An enforcement notice must specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise<sup>1</sup>.
3. Paragraph 2 of the notice is headed The Land Affected and the text states "The land known as 162 Heath Park Road, Romford RM2 5XL and also known as 'Natural Bean Speciality Coffee', shown edged in black on the attached plan....."
4. The plan attached to the notice shows the building Number 162 edged in black. The decked seating area and balustrades, described in the alleged breach of planning control, is sited on the land to the front of the building, between the building and the public footway. The area occupied by the seating area is not included within the area edged in black. This amounts to an error or misdescription.
5. The plan should show the relevant area in front of the building because that is where the development is sited. I have considered whether I can correct the notice using the power under section 176(1)(a) of the 1990 Act<sup>2</sup>, by

<sup>1</sup> Regulation 4(c) The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

<sup>2</sup> Section 176(1)(a) of the 1990 Act provides for any defect, error or misdescription in the enforcement notice to be corrected on appeal if the correction will not cause injustice to the appellant or the local planning authority.

substituting a corrected plan. The representations and submitted plans<sup>3</sup> indicate that the appellant has understood where the alleged breach is sited and to that extent no prejudice would be caused.

6. However, under section 172(2) of the 1990 Act an enforcement notice must be served on the owner and occupier of the land to which it relates and on any other person having an interest in the land, being an interest which in the opinion of the local planning authority is materially affected by the notice. I do not know if any additional person(s) should be served with a copy of the notice if the area of the land affected is extended.

## **Conclusion**

7. For the reasons given above, the enforcement notice does not specify with sufficient clarity the land where the breach of planning control is alleged to have taken place. 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.
8. In these circumstances, the appeal on the ground set out in section 174(2)(a) 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.

*Diane Lewis*

INSPECTOR

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<sup>3</sup> The appeal documents included the plans submitted with the planning application. The location plan A98240/1 identified in red the forecourt where the seating area is sited.