



Appeal Decision

Site visit made on 25 April 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2023

Appeal Ref: APP/B5480/C/22/3299904

Land rear of 61 and 63 Crow Lane, Romford RM7 0EP

- 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 A Wakefield against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 29 April 2022.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the material change of use of the land to use as two residential dwellings and operational development by the siting of a metal container in the rear garden.
 - The requirements of the notice are to:
 - 1) Cease the use of the land in the rear gardens as two self-contained dwellings; and
 - 2) Remove the container shown hatched in attached site plan and remove all fixtures and fittings which facilitated the use for two self-contained dwellings; and
 - 3) Remove all rubble and debris accumulated when taking steps 1 and 2 (above).
 - The period for compliance with the requirements is two months after the date when this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section section 174(2) (b), (d) and (g) of the Town and Country Planning Act 1990, as amended.
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The Enforcement Notice

1. If an enforcement notice does not comply with the various statutory requirements set out in s173 of the 1990 Act (as amended) then it will be a nullity and cannot be saved by the curative powers contained in s176(1). Leaving aside the wording within the notice for the moment it appears that the document contains all the relevant entries so as not to disqualify it at the outset. However, the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 under Part 2, 4C specifies that notices shall also show the precise boundaries of the land to which it relates, whether by plan or otherwise.
2. In this particular instance the plan attached to the enforcement notice issued, although titled 'The land known as Rear of 61 and 63 Crow Lane', has no street name annotated, nor does it properly identify the piece of land apparently targeted. In fact, the heavy black line which purportedly rings the said piece of land shows three particular sections within:
 - 1) a piece of land following what appears to be the dwelling at no 63 and its surrounding curtilage, or maybe the boundary of its current curtilage which seemingly has been reduced in size;

- 2) the footprint, hatched red, of a building or, as described by the Council, 'a container' standing within what may have previously been part of no 63's curtilage; and
 - 3) a piece of land taking in the dwelling at no 61, its curtilage – apparently truncated – but extended width-wise to encompass the access driveway situated to the east of the property, then running southwards to a point significantly beyond the rear of no 61, before stepping back to reach the south east corner of the said 'container'.
3. With both nos 61 and 63 ringed, incorporating also the access driveway – that which serves commercial units shown towards the base of the plan - and which extends beyond the line of residential curtilage, the ringed piece of land does not correspond with the specified 'land affected'. Further, although in isolation, as they are not appended to the enforcement notice, it is not clear what purpose the Land Registry Plans serve in support of the Council's case.
 4. When considering the alleged breach of planning control specified, given the extent of the piece of land ringed, and the fact that nos 61 and 63 are both residential dwellings, it cannot be the case that a material change in planning terms to residential use has taken place. Their curtilages already facilitates residential uses.
 5. The other limb of the alleged breach refers to operational development by way of the siting of '*the siting of a metal container in the rear garden*'. From my site visit inspection I noted that the building accommodates two small residential units within and it is seemingly these units which the Council is targeting. However, the alleged breach, as worded, does not effectively address this.
 6. Turning now to the enforcement notice's required steps, Step 1 requires that the '*use of the land in the rear gardens as two self-contained dwellings*' should cease. Notwithstanding the use of the plural, 'gardens' which is clearly incorrect, given the plan attached to the enforcement notice, Step 1's wording is both inexact and ambiguous. Due to the land's reconfiguration it appears that the building lies outside of no 63's rear garden.
 7. The gist of the enforcement notice would therefore seem to relate to the use of what is actually a metal-clad building for residential purposes, with the creation of two residential units. It is not a container and, in fact, there is actually a shipping container directly to the rear of no 63's curtilage but this has not been targeted. That aside, I consider that the construction of this enforcement notice falls short of what would be reasonably expected of a legal document, and certainly not one representing a charge on the land.
 8. Mindful of the judgement of *Miller Mead v MHLG* [1963] 2 WLR 225 I consider that parallels can here be drawn in that the notice is muddled and, in the main, uncertain – particularly the plan - to the point that the owner or occupier could potentially not tell in what respect the land had been developed without planning permission. Accordingly, when weighing up this case I am concerned that the said errors, when taken together, compound to strongly suggest the enforcement notice's invalidity. I, therefore, doubt whether, in the form issued, the notice provides the certainty necessary for it to have a reasonable chance of success.

9. Under the provisions of section 176(1) of the 1990 Act as amended it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation will not cause any injustice. It is considered that the Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing. However, I cannot here be certain that no injustice would be caused if I were to attempt to make the significant corrections necessary. In other words I find that this notice, as issued, is incapable of correction.
10. For the reasons given above I must conclude that the alleged breach of control and the stated requirements do not cogently relate to the ringed land, the subject of the enforcement notice, the extent of which lacks precision in relation to the breach and is flawed. In such circumstances it is not open to me to correct the errors in accordance with my powers under s176(1)(a) of the 1990 Act as amended since injustice is likely be caused were I to do so.
11. The enforcement notice is therefore invalid and will be quashed.

Timothy C King

INSPECTOR