The Planning Inspectorate

Appeal Decision

Site visit made on 7 August 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2023

Appeal Ref: APP/R5510/C/22/3296621
4 St Catherines Road, Ruislip HA4 7RU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Paul Reynolds against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The notice was issued on 22 March 2022.
- The breach of planning control as alleged in the notice is without planning permission the erection of brick piers to front boundary and erection of brick piers and brick boundary walls to side boundary of dwellinghouse on the land.
- The requirements of the notice are:
  (i) Demolish and remove the brick piers to the front boundary of the dwellinghouse as shown in Appendix 1 attached to the Enforcement Notice.
  (ii) Demolish and remove the brick piers and brick walls to the side boundary of the dwellinghouse, as shown in Appendix 2 attached to the Enforcement Notice.
  (iii) Remove from the land all debris, items, building materials resulting from compliance with points (i) and (ii) above.
- The period for compliance with the requirements is three calendar 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.

Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. An enforcement notice should enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control; and what steps the local planning authority require to be taken, to remedy the breach.

3. I have a duty to get a notice in order if I can. Pursuant to section 176 of the Act I have power to correct any defect, error or mis-description provided I am satisfied there will be no injustice to either party. However, difficulties are likely to arise when the allegation is incorrect such that the requirements may be incomplete.

4. In this case the breach of planning control is the erection of a wall, the wall constituting a single act of development. However, the allegation is not directed at the whole of the wall.

5. The Council in the allegation and requirements have sought to disaggregate the breach of planning control by separating the brick piers and front and side sections of the wall, such that compliance with the notice as issued would result in sections of free-standing wall remaining on the front boundary, which

would, following compliance with the notice, benefit from planning permission by virtue of section 173(11).

6. This is evidently not what the Council intended. Based on their submissions it appears that they intended to require the entire wall to be demolished. I sought views from the parties about whether corrections could be made however, the Council's response takes me no further. Whilst they refer to the appellant accepting the removal of the brick piers and the corner section of the wall exceeding one metre to be necessary, to remedy the breach, there is no reference in the notice to a reduction in height to one metre.

7. The appellant in their appeal on ground (f), suggested a lesser step to require the wall to be lowered to no more than one metre in height, in accordance with that which would have been permitted by Article 3 Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

8. However, since the section of wall which forms the front boundary is not identified in the allegation, the requirements could not be varied to require it to be altered as such.

9. I have considered whether I could correct both the allegation and requirements to encompass the whole wall. However, to do so would expand the allegation and requirements and therefore the scope of the enforcement notice, making it more onerous to comply with, thereby causing injustice to the appellant. Moreover, as the appellant identified, any corrections would require me to interpret the Council's intentions, and by doing so there would be an unacceptable risk of causing injustice to the Council.

10. Accordingly, I do not consider that correcting or varying the Notice is possible without causing injustice. Therefore, it should be quashed as inaccurate and incapable of correction without injustice to the appellant or other relevant occupiers as defined in section 174(6). Since this is a case where the Council have misdescribed the alleged breach, they may be able to issue another enforcement notice in exercise of their 'second bite' powers under section 171B(4).

Conclusion

11. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the errors 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.

12. 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.

Felicity Thompson

INSPECTOR