



Appeal Decision

Site visit made on 27 September 2023

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 November 2023

Appeal Ref: APP/N2535/C/22/3312739

The Forge (known as Blacksmith shop on land registry), 17B Brook Street, Hemswell, Gainsborough DN21 5UJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Alan Morris against an enforcement notice issued by West Lindsey District Council.
 - The notice was issued on 15 November 2022.
 - The breach of planning control as alleged in the notice is *Unauthorised works to a non-designated heritage asset including partial demolition of the building*.
 - The requirements of the notice are:
Using the existing retainable materials and new materials that best match the original materials restore the building to drawing OBF.01.04 Dated Nov 2019 and Existing Elevation revision A dated 18/07/2004.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) 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. The enforcement notice is quashed.

The Appeal Site

2. The appeal site is the site of an historic forge building. In 2004, planning permission was granted to convert and extend it to form a dwelling¹. The permission also allowed a domestic garage, which has been completed. When I visited the site, the forge itself was in a considerable state of disrepair and much of it had been demolished, including the roof, a sizable part of the western end of the building, most of the rear (northern) wall and the upper part of the eastern gable. New foundations had been formed next to the building, apparently in order to extend it in accordance with the approved scheme.

The Enforcement Notice

3. The appellant argues that the notice is defective such as to render it a nullity. It is important to consider potential flaws in the notice before addressing the grounds of appeal.

¹ Ref M04/P/0684

Legal background

4. The requirements as to the content of an enforcement notice are set out at section 173 of the *Town and Country Planning Act 1990* (as amended) and in Regulation 4 of *The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002*. These require, amongst other things, that a notice shall:
 - State the matters which appear to the local planning authority to constitute the breach of planning control [s173(1)(a)];
 - specify the steps which the authority require to be taken, or the activities which the authority require to cease [s173(3)];
 - specify the reasons why the local planning authority consider it expedient to issue the notice [s173(10) and Regulation 4(a) of the 2002 Regulations].
 - Specify all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice [s173(10) and Regulation 4(b) of the 2002 Regulations].
5. It is established law that a notice must tell the recipient fairly what has been done wrong and what must be done to remedy it². The other requirements of s173 must also be met. A notice which is 'defective on its face' may be 'null' (without legal effect)³, but whether a defect in a notice renders it null in any given instance is a matter of judgment. A notice which is found to be a nullity because it does not comply with section 173 cannot be rescued by varying its terms⁴. However, it is not desirable for a notice to be declared a nullity on the basis of minor technical flaws – 'both the Inspector and the Court should approach the exercisein a way which is not unduly technical or formulistic'⁵.

The matters comprising the alleged breach of planning control

6. The Council alleges 'unauthorised works' to the building. This does little other than to establish that the Council's concern relates to operational development. The only detail added is that the works include partial demolition of the building. There are two difficulties with this. First, the use of the word 'including' implies that the notice is aimed at other unauthorised works, in addition to the demolition. Since these are not specified, the recipient of the notice has no way of knowing what they might be.
7. Second, the specific elements of demolition are not explained further or illustrated in any way. Ordinarily, unauthorised demolition works might be obvious and need little explanation. In this case, however, the building has been undergoing building works with the apparent intention of implementing the 2004 planning permission. It is quite clear that the works to carry out the development would be very extensive and would necessitate parts of the building being dismantled.
8. Indeed, it appears that the Council accepted that the demolition works could be extensive. An email to the appellant's representative following a site meeting in August 2022 states: 'It is agree[d] the gable beside the neighbouring property

² Miller Mead v MHLG [1963] 1 All ER 459

³ R v Wicks [1996] JPL 743; [1997] JPL 1049 (HoL)

⁴ Payne v NAW and Caerphilly CBC [2007] JPL 117

⁵ Oates v SSCLG [2018] EWCA Civ 2229

should be reduced to the eaves level for health and safety reasons and the timbers of the roof in the process. The same may take place with the other west gable'. The email added 'It is understood that the other gable may collapse during control deconstruction that is approved under the 2004 application'. Thus, it appears that the Council accepted that the demolition works necessary for the conversion might include the removal of the roof, one gable in its entirety and one gable above eaves levels. It is also clear from the approved plans that an opening would need to be made in the rear elevation to connect through to the permitted rear extension.

9. In these circumstances, where the Council plainly accepted that extensive deconstruction of the building would take place, it was important for the enforcement notice to identify with some clarity which demolition works took matters beyond what could be reasonably regarded as part and parcel of the conversion works. However, the notice does not include any photographs, drawings or written description to achieve this. Thus, the appellant has been placed in a position where the works that have led to the issuing of the notice are not clear.
10. The Council now says that an excessive portion of the southern wall has been removed, stating that 'The works approved only required a section of the southern wall to be removed to create an opening'. While a helpful clarification of the Council's concerns, this detail was not included in the enforcement notice. Moreover, it is still not clear whether this is the only concern or whether any of the other extensive demolition works, or other operations, have exceeded what the Council considers should have been carried out.

The requirement of the notice

11. The requirement of the notice is to 'restore the building to drawing OBF.01.04 Dated Nov 2019 and Existing Elevation revision A dated 18/07/2004'. These drawings purport to show the building as it existed on the dates they were prepared (15 years apart). It is not clear why the Council included both drawings, but it creates some difficulty. While the building appears generally similar in the two drawings, the roof depicted on the later drawing has a noticeably shallower pitch. Consequently, it would not be possible to rebuild the building in accordance with both drawings. Thus, even if I were persuaded that the reconstruction of the building to its previous form was justified, the notice could not stand as it is because it is not clear which of the plans should be followed.

The reasons for issuing the notice

12. It is clear from the Council's appeal statement and the report requesting authorisation to take enforcement action that the Council considered that relevant development plan policies applied to this case. The notice does not, however, specify the relevant policies, as required by s173(10) and Regulation 4(b). That said, the notice does set out clear reasons for issuing it.

Assessment

13. The courts have established that much must be wrong with a notice to render it a nullity. Here, I am not persuaded that the matters comprising the alleged breach of planning control or the requirements of the notice are so 'hopelessly ambiguous' (as per *Miller Mead*) as to lead to a finding of a nullity. While the

failure to cite the development plan policies was an error, the reasons set out gave the appellant an adequate understanding of the Council's concerns. However, the failings I have identified are significant and the notice cannot stand as it is. Under section 176(1) of the Act I have the power to correct any defect, error or misdescription in the enforcement notice and/or to vary its terms, providing that so doing will not cause injustice to the appellant or the local planning authority. The question is therefore whether injustice would occur in this case.

14. As I have already indicated, the notice is not clear regarding the extent of demolition works the Council objects to, or the other, non-demolition works that the notice sought to target. The minimal additional information provided in the Council's statement does little to clarify matters. Nor is there any further clarity regarding the requirements of the notice. Accordingly, I simply do not have a sufficient understanding of the Council's intentions regarding the allegation and requirements of the notice to enable me to bring it into order. To attempt to do so would run the risk of failing to address the Council's concerns, which would cause injustice to the Council, or making the notice more onerous than the Council intended, which would be unfair on the appellant. In these circumstances, the only option open to me is to quash the notice. This may leave open to the Council the option of issuing a revised notice, using the powers available under section 171B(4).

Conclusion

15. 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. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (c), (f) and (g) 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.

Peter Willows

INSPECTOR