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# Appeal Decision

Site visit made on 23 October 2023

**by M Savage BSc (Hons) MCD MRTPI**

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

**Decision date: 22 November 2023**

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## **Appeal Ref: APP/N4205/C/23/3325018**

### **2A Lenham Gardens, Bolton BL2 6HN**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Tyler James Entwistle against an enforcement notice issued by Bolton Metropolitan Borough Council.
  - The notice was issued on 9 May 2023.
  - The breach of planning control as alleged in the notice is without planning permission, the erection of fencing in excess of 1m in height adjacent to the highway.
  - The requirements of the notice are to: Either:
    - (i) Demolish and remove the fencing (including fence posts) from the land; OR
    - (ii) Reduce the height of the fencing (including fence posts) to not less than 1m in height above original ground level.
  - The period for compliance with the requirements is: One month.
  - The appeal is proceeding on the ground 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.
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## **Decision**

1. The enforcement notice is quashed.

## **Matters concerning the notice**

2. A notice should be drafted so as to tell the recipient fairly, what he has done wrong and what he must do to remedy it. The alleged breach is without planning permission, the erection of fencing in excess of 1m in height adjacent to the highway. The notice requires the recipient to either (i) Demolish and remove the fencing (including fence posts) from the land; OR (ii) Reduce the height of the fencing (including fence posts) to not less than 1m in height above original ground level.
3. The requirements should flow from the allegation. The requirement to reduce the height of the fencing to not less than 1m in height above original ground level contradicts the allegation. For example, a reduction to 1.9m in height would comply with the notice. However, this would be well in excess of 1m. Were I to uphold the notice without correction, compliance with it could therefore result in planning permission being granted under section 173(11) of the Act for a fence well in excess of 1m in height.
4. I wrote to the parties on this matter. The Council advises it intended to require that the fencing is reduced in height so that it is **not more** than 1m in height above original ground level. I have wide powers of correction, subject to there being no injustice to either party. The Council suggests that the notice can be corrected without causing injustice to either party. However, it has not explained how it has come to this conclusion.

5. Given the wording of requirement (ii), a limited reduction in height would ensure compliance with the notice. Correcting the wording as suggested by the Council, would make complying with the requirement more onerous, since the appellant would need to remove a greater extent of panelling and posts. Deleting requirement (ii) would also disadvantage the appellant, since they would no longer have the option of retaining the fencing in some form.
6. I do not consider that the imprecision is such as would necessarily render the Notice a nullity. This is because the allegation and requirements are generally stated. Nevertheless, in light of the above, I find that the notice is invalid beyond correction and should be quashed.

### **Conclusion**

7. For the reasons given above, I conclude that the enforcement notice does not 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. 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.

*M Savage*

INSPECTOR