



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: 28 November 2023

Appeal Ref: APP/N4205/C/23/3324753

Land to the rear of 156-158 Derby Street, Bolton BL3 6JR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Hamza Mohammad against an enforcement notice issued by Bolton Metropolitan Borough Council.
 - The notice was issued on 23 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of a flue as shown for identification purposes in the photograph attached to this notice.
 - The requirements of the notice are to:
 - i. Demolish and remove from the site the flue;
 - ii. Remove from the site all building materials and rubble arising from compliance with requirement (i) above; and
 - iii. Make good to the host property any damage caused by the demolition of the flue.
 - The period for compliance with the requirements is: 90 days.
 - 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. Since the notice is found to be a nullity, no further action will be taken in connection with the appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act as amended.

Matters concerning the notice

2. Section 173(1) of the Act says that a notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control. Section 173(2) of the Act says that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
3. The enforcement notice alleges the installation of a flue and refers to a photograph which is attached for identification purposes. However, two photographs are attached to the notice, one of which shows two flues which sit side by side: a substantial flue, with a silver and black finish; and a slimmer silver flue, which terminates slightly nearer to the eaves of the main building. I was able to see both of these flues during my visit.
4. While the appellant seeks to address the effects of the larger flue in their appeal submission, it is clear from the notice that both flues were *in situ* when the enforcement notice was issued. It is not clear from the notice which flue is referred to in the allegation, or which flue must be removed. Given the

penalties for non-compliance with an enforcement notice, it is essential that there is no ambiguity regarding the breach that has occurred and the steps that are required to remedy it. I find the enforcement notice to be hopelessly ambiguous and uncertain. Consequently, in my judgement, the notice is a nullity.

5. The enforcement notice identifies the land affected as 'Land to the rear of 156-158 Derby Street, Bolton'. However, the red line boundary on the attached plan does not appear to include the area within which the flue is sited, but identifies the site next door. Section 173(10) of the Act says that an enforcement notice shall specify such additional matters as may be prescribed. Section 4 (c) of the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations (ENAR) 2002 requires the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise.
6. While it is clear from the appellant's evidence that they understand which land the enforcement notice is referring to, it is not clear whether the errors in the plan have had consequences in terms of who was served or who appealed. However, given my finding that the notice is a nullity, there is no need for me to consider whether the plan can be deleted without causing injustice to either party, since there is nothing to be corrected.

Conclusion

7. For the reasons given above, I conclude that the notice is a nullity. 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 do not fall to be considered.

M Savage

INSPECTOR