
Appeal Decision

Site visit made on 12 April 2023

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2023

Appeal Ref: APP/Q9495/C/22/3302656

Land at Oakbank House, Helm Road, Bowness-on-Windermere, Cumbria LA23 3BU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Louise Stewart against an enforcement notice issued by Lake District National Park Authority.
 - The enforcement notice, numbered E/2021/0130, was issued on 10 June 2022.
 - The breach of planning control as alleged in the notice is, without planning permission, operational development consisting of the installation with top-hung, 1 over 1 double glazed windows in the south, west, north and east elevations.
 - The requirements of the notice are to remove the windows which are labelled "X — REMOVE" from the south, west, north and east elevations of the Land.
 - The period for compliance with the requirements is eight (8) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.
-

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 10 July 2023.

Summary Decision: no further action is taken

Application for costs

1. An application for costs was made by Ms Louise Stewart against Lake District National Park Authority. This application is the subject of a separate Decision.

Procedural matters

2. The appellant considers that the enforcement notice is a nullity. This is a matter that does not fall neatly within the scope of any of the grounds of appeal available to an appellant under section 174(2) of the 1990 Act. It is therefore necessary to consider it separately here.

Nullity

3. The modern approach to the question of nullity is to be found in the judgment of the High Court in *Oates v SoCLG and Canterbury*¹, which drew extensively upon the preceding case law on the subject. A number of principles emerge from this judgment, including that the test in relation to nullity is best understood not as one of 'hopeless ambiguity' but rather as a failure to tell the recipient with 'reasonable certainty' what the breach of planning control is and

¹ *Oates v SoCLG and Canterbury* [2017] EWHC 2716

what must be done to remedy it. Overall, the judgment in *Oates* indicates that the question of nullity should not be approached in a way which is unduly technical or formalistic.

4. The first principle identified in *Oates* is that if an enforcement notice does not comply with s173 (1) or (3) and (4) of the 1990 Act ("the Statutory Requirements"), then it is a nullity and cannot be saved by the curative powers contained in s176 (1) of that Act.
5. Section 173(3) of the 1990 Act sets out that an enforcement notice shall specify the steps which the Local Planning Authority require to be taken, or the activities which the Authority require to cease, in order to achieve, wholly or partly, any of the following purposes; (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach.
6. In the context of this appeal, the key phrase Section 173(3) of the 1990 Act is "by restoring the land to its condition before the breach took place". In this case, the notice only specifies that the windows comprising the alleged breach of planning control should be removed, and no more. There is no attendant requirement to restore the land to its condition before the breach took place through the fitting of replacement windows. Consequently, the notice fails to specify the steps that the Local Planning Authority require to be taken, specifically in relation to (a) as set out in section 173(3). The notice would therefore not comply with section 173(3) of the 1990 Act.
7. The judgment in *Oates* indicates that a degree of uncertainty does not necessarily render a notice non-compliant with statute and that the notice should be read as a whole. In the facts and circumstances of this particular case, the degree of uncertainty resulting from the absence of any requirement to restore the land to its condition before the breach took place goes beyond that envisaged in *Oates*. I therefore conclude that the notice, when read as a whole, fails to tell the recipient with reasonable certainty what must be done to remedy the breach of planning control alleged. The notice does not comply with statute, specifically section 173(3) of the 1990 Act. The notice is a nullity.
8. Because the notice is a nullity when considered against the first principle set out in *Oates*, it is not necessary for me to consider the notice against the other principles identified in that judgment. A notice found to be a nullity is incapable of being corrected or varied. I therefore have no option other than to quash the notice.

Conclusion

9. I conclude that the notice is a nullity. In these circumstances, the appeal on the ground set out in section 174(2)(c) of the 1990 Act as amended does not fall to be considered.

Formal Decision

10. 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.

Paul Freer
INSPECTOR