



Appeal Decision

Site visit made on 15 December 2023

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2024

Appeal Ref: APP/X4725/C/23/3326752

Land at The Kinsley Hotel, 84 Wakefield Road, Kinsley WF9 5EH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Gordon Mair of Kinsley Leisure Limited against an enforcement notice issued by Wakefield Metropolitan District Council.
 - The notice was issued on 28 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a boundary wall and gates exceeding 1 metre high adjacent to a public highway.
 - The requirements of the notice are:
 - a) Demolish the unauthorised wall and gates and
 - b) remove all demolition materials from the Land.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) 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.

Reasons for the Decision

2. It is incumbent upon me to put the enforcement notice in order. S176(1)(a) and (b) of the 1990 Act¹ allow me to correct any defect, error or misdescription in an enforcement notice or to vary the terms of an enforcement notice, provided no injustice to the appellant or local planning authority would be caused.
3. In identifying the land affected, the enforcement notice (the Notice) includes the words '84 Wakefield Road'. The Council has advised that the street number identified should be '27' and not '84'. The Notice also identifies the land affected as 'The Kinsley Hotel', and the property affected by the Notice is shown on the plan attached to it. In these circumstances, I find that the land affected by the Notice has been identified with sufficient clarity that correcting the street number would cause no injustice.
4. The Notice is directed at the carrying out of development without the required planning permission, s171A.(a) of the 1990 Act. Section 3 of the Notice also states, 'Without planning permission'. As such, the inclusion of the word 'unauthorised' in the allegation is superfluous and should be deleted. Step (a)

¹ Town and Country Planning Act 1990 as amended

of the requirements would also need to have the word 'unauthorised' deleted for consistency.

5. The operational development to which the Notice is directed is the erection of a boundary wall and gates. The allegation goes on to include the words 'exceeding 1 metre high adjacent to a public highway'. These words do not form part of the matter that constitutes the breach of planning control. Instead, they are a reason why planning permission is required. As such, they are superfluous to the matter which constitutes the breach of planning control and should be deleted.
6. The courts have held that an enforcement notice must tell the recipient fairly what they have done wrong and must do to remedy it. Upjohn LJ ruled, in *Miller-Mead*², that the recipient of the Notice 'is entitled to...find out from within the four corners of the document what one is required to do or abstain from doing'.
7. I saw during my site visit that The Kinsley Hotel has boundary walls adjacent to Wakefield Road and Gorton Street, both of which are presumably public highways. The boundary wall also runs perpendicular to Gorton Street, presumably along the property's rear boundary. There are two gated accesses in the Gorton Street section of the boundary wall, which provide vehicular and pedestrian access to the rear yard of the property.
8. I also saw that the boundary wall has two parts: a blockwork part adjacent to Wakefield Road and part of Gorton Street and a red brick part adjacent to Gorton Street and along the rear boundary. From their appearance, the red brick boundary wall would seem to be an original feature of The Kinsley Hotel, while the blockwork boundary wall is of newer construction.
9. Both the blockwork and red brick parts of the boundary wall, as well as the gates, exceed 1 metre in height. All the blockwork boundary wall and part of the red brick boundary wall are adjacent to a public highway. It is not clear from the description of the breach, as originally written or as would be corrected, whether the Notice is directed at the blockwork boundary wall and gates only or the blockwork boundary wall and the red brick part of the boundary wall adjacent to Gorton Street as well as the gates.
10. If the word 'unauthorised' in the allegation had been meant to describe the blockwork part of the boundary wall, that is not clear. Similarly, there is nothing to identify which is the 'authorised' part of the boundary wall, and whether it would be the red brick part.
11. The plan attached to the Notice identifies the whole of The Kinsley Hotel property with a dark blue outline and a colour wash in a paler shade of blue. The position of the boundary wall and gates to which the Notice relates is not identified on the plan. Therefore, if some lesser section of boundary wall was meant to be identified, the plan attached to the Notice does not show it.
12. The Notice is not directed at the rear boundary wall as it is not 'adjacent to a public highway'. I could vary the plan attached to the Notice so that the dark blue outline only includes those parts of the boundary wall adjacent to Wakefield Road and Gorton Street. The allegation would also need to refer to

² *Miller-Mead v MHLG* [1963] 2 WLR 225

the erection of boundary wall and gates 'in the approximate position shown by the dark blue line on the attached plan', or words to that effect. This could cause injustice to the appellant or Council as a part of the red brick boundary wall would remain caught by the Notice.

13. The lack of clarity as to which parts of the boundary wall the Notice relates also means that the recipient would not know how much boundary wall, adjacent to Gorton Street, would have to be demolished to comply with step (a). The Notice does not distinguish between the blockwork and red brick parts of the boundary wall and as such I cannot correct the Notice. The Notice does not therefore fairly tell the recipient what they have done wrong or must do to remedy it with clarity.
14. Furthermore, the reasons for issuing the notice, only include policy numbers and their general function. They do not identify why the boundary wall and gates are contrary to the specified policies or what harm they cause. The reasons are therefore uncertain and ambiguous in terms of telling the recipients why the development alleged is unacceptable in planning terms.
15. The Council's Statement does clarify that the Notice is directed only at the blockwork boundary wall and gates. It also expands on the reasons for issuing the Notice, explaining that the appearance of the blockwork boundary wall has an unacceptable effect on the character and appearance of the area. Furthermore, its height near the junction of Gorton Street and Wakefield Road obscures visibility for vehicles emerging from Gorton Street to the detriment of highway safety. There is nothing within the Notice that would allow its recipients to identify these harms identified in the Council's Statement. Even if these harms could be identified elsewhere within the Notice, the 1990 Act does not provide for me to correct or vary the reasons for issuing the Notice.

Conclusion

16. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance or the reasons why the erection of the boundary wall and gates is contrary to the identified planning policies.
17. It is not open to me to correct these errors in accordance with my powers under section 176(1)(a) or (b) of the 1990 Act as amended, since injustice would be caused were I to do so. Furthermore, I have no power to correct or vary the reasons the Notice was issued. The enforcement notice is therefore invalid and will be quashed.
18. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (b) and (c) 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 Madge

INSPECTOR