



Appeal Decision

Site visit made on 20 February 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2024

Appeal Ref: APP/M2270/C/23/3320663

80 London Road, Southborough, Tunbridge Wells, Kent TN4 0PP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Elaine Moon against an enforcement notice issued by Tunbridge Wells Borough Council.
- The notice was issued on 14 March 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the rear yard to a part-enclosed storage area for business use shown in its approximate position shaded blue on the attached plan¹.
- The requirements of the notice are set out as:
"The Council consider the following steps are necessary to remedy the breach of planning control:
 - (i) Cease the use of the Land for storage purposes for business use.
 - (ii) Dismantle and remove the part-enclosed business storage area shown in its approximate position shaded blue on the attached plan.
 - (iii) Remove all resultant materials including but not limited to metal poles, corrugated metal sheeting, and plastic sheeting from the Land."
- The period for compliance with the requirements is: 1 calendar month after the notice takes effect.
- 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.

Summary Decision: The enforcement notice is quashed.

The Notice

1. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.
2. This enforcement notice (the Notice) specifies, at Section 2, that it affects land at 80 London Road as shown edged in red on the attached plan, the plan referred to here being one attached to the Notice (the Plan). It defines this as "the Land". The Land edged red on the on the Plan encompasses all of the land that includes a building fronting London Road and a rear yard that extends from the back of that building to Bedford Road.

¹ Reference to the plan is a reference to a plan attached to the enforcement notice.

3. At Section 3, the Notice sets out the alleged breach of planning control. This is described as the “change of use of the rear yard to a part-enclosed storage area for business use shown in its approximate position shaded blue on the attached plan”. Thus, the Notice alleges a change of use, with the new use being defined as a ‘part-enclosed storage area for business use’. It is not clear whether a part enclosed storage area is a use of land and, if it is, whether the allegation is for a storage use, or an undefined business use.
4. There is a blue shaded rectangle on the Plan over approximately half of the rear yard. The allegation is unclear as to whether it relates to the whole of the rear yard or just the blue shaded area. Moreover, the requirements of the Notice, set out at Section 5, are inconsistent with the allegation because they require the use of the Land for storage purposes for business use to cease. As the Land is defined as the whole site, including the building, this goes beyond the matters alleged in the Notice which, at most, are only targeted at the rear yard.
5. As set out in Section 5 of the Notice, the steps required to be taken start with the words “The Council consider the following steps are necessary to remedy the breach of planning control”. There is then a list of 3 remedial steps. This wording introduces uncertainty as to whether the steps listed need to be done, or whether they are examples of activities that the Council thinks would remedy the breach. I have considered whether this renders the Notice a nullity on the basis that it does not provide clear steps that must be taken. However, given that there are a number of steps specified, I find that the vagueness is a matter that is within my remit to correct.
6. On a final matter, the Notice does not allege a material change of use. This is important because section 55(1) of the 1990 Act defines development as including ‘the making of a material change in the use of any building or other land’ (my emphasis). If a change of use is not material, it follows that planning permission is not required for it and, if carried out, there would be no breach of planning control.
7. For the reasons given above, I conclude that the Notice does not specify with sufficient clarity what the alleged breach of planning control is and what must be done to remedy it. It is, therefore, invalid.
8. In seeking to understand the intention of the Notice with a view to correcting it, I have sought additional information from the Council. They have explained that the Notice is only intended to target the area shaded blue and has provided a new plan that I could substitute the existing one for. A minor change to the allegation to clarify that it only related to that area would be required.
9. However, clarifying that the allegation only refers to the blue shaded area, being part of the rear yard, raises the question as to whether a new planning unit has been formed through the alleged breach of planning control. Indeed, the Council has now confirmed its position as being that the planning unit is just the blue shaded area. This is, however, inconsistent with the allegation. The implication from the Notice as drafted is that the planning unit encompasses the building and the yard.
10. For me to be satisfied that I can correct the Notice in line with the Council’s suggestions, it is necessary for me to compare the situation on the appeal site

(that is the whole of the land edged red on the Plan) both before and after what is alleged in the Notice took place, paying particular attention to the planning unit or units and their use.

11. The Council has confirmed that the previous use of the rear yard was believed to be as a parking area in association with 80 London Road. That association demonstrates that it was, at that time, accommodating activities that were ancillary to the main use or uses going on at No 80. Indeed, there is no suggestion that the rear yard was occupied by anyone other than the occupiers of No 80, and it is not suggested that other parties used the rear yard to park their vehicles. All of this leads to a conclusion that the rear yard was not a planning unit of its own and that the activities taking place on it were ancillary, rather than being a primary use of the land.
12. With the construction of the part-enclosed storage area described in the matters alleged, the activities carried out within the blue shaded area changed from parking to storage. The Council has confirmed that that storage was solely in connection with the commercial use at No 80. That it was 'solely' in connection with No 80 suggests that the activities being undertaken were also ancillary to the primary use of No 80.
13. While the activities being undertaken before and after the change were different, I find that neither of them were primary uses taking place on their own planning unit. As I have set out above, only the making of a material change of use of land constitutes development within the meaning of the 1990 Act. A change from one ancillary activity to a different ancillary activity does not result in a material change of use of land. If the above analysis is correct, then I cannot correct the Notice to reflect what is said to have occurred as it would not allege a breach of planning control.
14. Even if I am wrong, the corrected Notice would clearly allege a material change of use through the formation of a new planning unit, either separate to the rest of the rear yard, or separate to the whole of the Land as originally defined. That would result in a fundamentally different allegation that would be more clearly stated and, as such, the appellant may have approached the appeal in a different way.
15. Therefore, injustice would arise from such a correction, so it is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act. The enforcement notice is invalid and will be quashed.
16. In these circumstances, the appeal on ground (a) set out in section 174(2) of the 1990 Act and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.
17. Should the Council identify that a material change of use of the planning unit, or the introduction of a new separate primary use that creates a new planning unit has taken place, they would be free to consider serving another enforcement notice. Likewise, if structures that amount to operational development are placed on the land, then similar consideration could be given. Nothing in this Decision should be taken to infer whether any new or more intensive activities that might take place at the site, or the erection of any structures would or would not amount to a breach of planning control, or be acceptable in planning terms.

Formal Decision

18. The enforcement notice is quashed.

M Bale

INSPECTOR