



Appeal Decision

Site visit made on 26 March 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th April 2024

Appeal Ref: APP/T5150/C/22/3311117

97 High Road, London NW10 2SL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Marius Tirnaveanu against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 1 November 2022.
 - The breach of planning control as alleged in the notice is: 'Without planning permission, the erection of a rear structure, providing seating area and replacement of door and two windows to rear with two folding doors to existing cafe (Willesden Conservation Area)'.
 - The requirements of the notice are: STEP1 Completely and permanently remove the timber trellis from the top of the rear wall of the premises. STEP 2 Remove the two folding doors to the rear seating area and replace it with a folding door as shown in the picture attached to this notice. STEP 3 Remove the two window installations to the rear seating area and restore the rear wall to its original condition before the breach took place. STEP 4 Remove the wooden trellis that covers the full width of the rear outside seating area of the premises. STEP 5 Remove all resulting debris and waste materials, associated with the unauthorised development, from the premises.
 - The period for compliance with the requirements is 2 months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).
-

Decision

1. Since the notice is found to be a nullity, no further action will be taken in connection with the appeal. In light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.

Nullity

2. Section 173(1)(a) of the Act requires an enforcement notice to state the matters which appear to constitute the breach of planning control. Section 173(2) clarifies 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. Section 173(3)-(4) requires an enforcement notice to specify the steps required to be taken to remedy the breach or any injury caused to amenity.
3. An enforcement notice will be null if it is defective on its face, such as by missing some vital element that a notice is required to include under section 173. To accord with subsections (1)(a) and (3), an enforcement notice must fairly tell the person who has received it what the breach of planning control is and what must be done to remedy it, with reasonable certainty.
4. The alleged breach of planning control can be interpreted in at least two different ways: 1) the erection of a rear structure, providing seating area; and replacement of door and two windows to rear with two folding doors; or 2) the

erection of a rear structure, providing seating area and replacement of door and two windows to rear; and two folding doors. I also note that there are various potential structures at the rear of the site which could be referred to by the notice. The allegation is therefore unclear and poorly worded at first glance.

5. Aside from uncertainty over what the rear structure may comprise, my first potential interpretation of the alleged breach does not refer to any windows being installed within any walls at the site, but it does refer to a door and two windows being replaced with two folding doors. However, the third step of the notice requires two windows to be removed from a rear wall. I noted two windows and two folding doors in a side wall during my site visit, but no windows in the rear wall. A 'before' photograph attached to the notice shows that no windows previously existed in the side wall, and that a set of double doors appear to have been replaced with two glazed folding doors.
6. My second potential interpretation of the alleged breach refers to two windows being provided as part of the erection of an unspecified rear structure. This aligns with the third step of the notice. However, there is no evidence that any windows have been installed in the rear wall – they appear to have been installed in a side wall. It is entirely unclear how the erection of the unspecified rear structure could be taken as 'providing' those windows.
7. For the reasons I have given, neither of my potential interpretations of the alleged breach tell the recipient of the notice what development has been carried out in breach of planning control with reasonable certainty. Reference to the rear wall and two window installations in the steps required to be taken by the notice compound the confusion which is bound to be created by the poor wording of the alleged breach.
8. The Council has sought to clarify that the rear structure was a horizontal trellis covering the back area, which has since been removed. I have been invited to correct/vary the notice so that the alleged breach refers to 'the replacement of door and two windows to the rear with two folding doors' and to delete the first, fourth and fifth steps of the notice. This does not clarify matters, as there is no evidence that any windows have been replaced. Furthermore, the third step would require the removal of windows and the restoration of the rear wall, when there are no windows in the rear wall and the Council's suggested variation to the alleged breach does not refer to any windows being installed.
9. I find that the notice is hopelessly ambiguous and uncertain, to the extent that it does not accord with section 173(1)(a) and (3) of the Act and is defective on its face. With regard to the relevant caselaw¹, I consider the notice to be null and there is, in effect, no 'enforcement notice' capable of being corrected and/or varied under the provisions of section 176 of the Act.

Conclusion

10. I conclude that the notice is a nullity. In these circumstances, the appeal on ground (f) does not fall to be considered.

L Douglas

INSPECTOR

¹ Miller-Mead v MHLG [1963] 2 WLR 225, Payne v NAW and Caerphilly CBC [2007] JPL 117, and Oates v SSCLG & Canterbury CC [2017] EWHC 2716 (Admin), [2018] EWCA Civ 2229; [2019] JPL 251