



Appeal Decision

Site visit made on 17 April 2024

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 May 2024

Appeal Ref: APP/A5840/C/23/3335763

117 Hillingdon Street, London, Southwark SE17 3UX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Miss Paulette Barrett against an enforcement notice issued by the Council of the London Borough of Southwark.
- The enforcement notice was issued on 23 November 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a rear extension and change of use from a residential property within use class C3 to a mixed use of residential and hot food takeaway; ("the Unauthorised Development").
- The requirements set out in paragraph 5 of the notice are:
 - 5.1 Demolish the Unauthorised Development, which for the avoidance of doubt includes any foundations;
 - 5.2 Restore the land to its previous condition before the Unauthorised Development took place, which for the avoidance of doubt includes re-turfing the garden; and
 - 5.3 Remove from the site and properly dispose of all detritus and waste arising from compliance resulting from the carrying out of steps 5.1 and 5.2 above.
 - 5.4 Return the property a residential use, which for the avoidance of doubt means the cessation of the use of the property as a takeaway or restaurant with no further collections, or deliveries arising from the property due to this use.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. On the appeal form, the appellant requested that the appeal proceed by way of an Inquiry. At a Case Management Conference on 6 March 2024 it was agreed that an Inquiry was no longer necessary. Following a revised deadline for the receipt of final comments, the procedure for this appeal was changed to the written representations procedure on 9 April 2024.
2. Grounds (b), (c) and (d) were confirmed by the appellant as withdrawn in correspondence to the Planning Inspectorate dated 11 April 2024 and so there is no need for me to consider any matters raised relating to those grounds.
3. As there is no appeal on ground (a), I am unable to consider any planning merits of the appeal development, including any similar structures neighbours may have.
4. I have corrected an obvious drafting error in paragraph 5.3 of the notice. I am satisfied this does not result in any injustice to the appellant or the Council.

The Notice

5. The appellant considers that the notice is a nullity. According to the appellant, the notice fails to identify the relevant operational development it apparently seeks to enforce against and as such, it fails to identify the matters that constitute the breach of planning control. But it is clear from the allegation in paragraph 3 of the notice what the notice is directed at. So it complies with section 173(1) of the 1990 Act and, compliant with section 173(2), I am satisfied that any person on whom a copy of the notice was served will know what the matters are which constitute the breach of planning control.
6. The appellant states that the steps required in the notice are vague, subjective and unclear, it is unclear what the appellant is required to demolish and it is unclear what condition the appellant is required to return the land to. But on the appellant's own case, the natural reading of the notice is that the rear extension needs to be demolished, so requirement 5.1 is not unclear. Regarding the condition the appellant is required to return the land to, requirement 5.2 is clear that this is the condition before the unauthorised development took place and that for the avoidance of doubt this includes re-turfing the garden.
7. My attention has been drawn to the test in *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196, ie whether the notice tells the person on whom it is served fairly what he has done wrong and what he must do to remedy it. According to the appellant, the notice fails this test and fails to specify with any degree of certainty the steps the appellant is required to perform to comply. But it is clear that, in addition to the change of use alleged, the notice is directed at a rear extension and that this must be demolished, in addition to the mixed use being ceased. So I do not agree with the appellant's contention that the notice is so hopelessly unclear that it is a nullity.
8. Whether any requirement of the notice is excessive is a matter for the ground (f) appeal, which I consider later in this decision.
9. Under section 176(1) of the 1990 Act, I may correct any defect, error or misdescription in the enforcement notice; or vary the terms of the enforcement notice, if I am satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority. The appellant states that fundamental flaws in the notice have resulted in the appellant having brought an appeal on the basis that the structure that is being enforced against is a different structure altogether. According to the appellant, as such, injustice would be caused to the appellant.
10. But from the information available to me, the dispute in this regard is whether any parts of the rear extension existed prior to the rear extension having been formed, such that they should survive the requirements of the enforcement notice. Moreover, based on the cases put to me, it has not been explained why injustice would be caused, if I were to vary any excessive requirement of the notice in favour of the appellant, pursuant to ground (f). Taking all of the above into account, I am satisfied that the notice complies with all statutory requirements for enforcement notices, including those set out in section 173 of the 1990 Act. Nothing has been provided to lead me to a different conclusion in this regard.

Reasons

11. An appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
12. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.
13. Based on the requirements of the notice, its purpose is to remedy the breach of planning control, pursuant to section 173(4)(a) of the 1990 Act. This is consistent with what is stated in paragraph 5 of the notice itself.
14. The appellant has indicated that the brick walls around the rear extension were pre-existing. This is consistent with the March 2019 Google Street View image provided by the Council and my own observations at my site visit, where I saw the brick walls which form part of the extension appear to be the same age as the brickwork of the appeal building. The Council accepts that the boundary walls were constructed at the same time as the house was built. As such, it is excessive for the notice to require the demolition of the brick walls and their foundations and I shall vary the notice accordingly in this regard.
15. The notice requires re-turfing of the garden. But the appellant has indicated that the garden has a 'tiled' floor, which she has not disturbed, under the rear extension. This is consistent with my observations at my site visit where I saw that the internal finished floor level of the extension sits above the external ground level, viewed from the rear of the appeal property.
16. Moreover, there is no indication from the 21 September 2019 or 11 April 2020 aerial images, provided by the Council, that the garden was turfed prior to the breach of planning control occurring. There is no scope for an enforcement notice to require improvements to the land. As such, it is excessive for the notice to require re-turfing and I shall vary the notice accordingly in this regard.
17. The appellant has also indicated that the 'gate access' on the rear extension existed prior to the breach of planning control. Whilst this may be true of the opening within the brickwork, which matches those seen on neighbouring properties, there is no evidence that the external door or 'gate' now seen on the rear extension existed prior to the breach of planning control. A photograph provided by the Council of the extension during construction supports my view in this regard and so the notice requires no variation in this respect.
18. Paragraph 5.4 of the notice requires that the property is returned to a residential use. But an enforcement notice cannot require that a lawful use is actively carried out and in any event, this requirement exceeds what is necessary to achieve the purpose of the notice. All that is needed in this regard

is for the mixed use alleged to cease and so I shall vary the notice accordingly in this regard.

19. According to the appellant, a more appropriate step than those specified in the notice would be to review the appellant's food licence. But this would not achieve the purpose of the notice and so no variation is justified in this respect.

20. The appeal on ground (f) succeeds to the extents set out above.

Conclusion

21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

Formal Decision

22. It is directed that the enforcement notice is corrected and varied by:

- the deletion of the words "(the Unauthorised Development)" from the allegation in paragraph 3 of the notice;
- the deletion of the requirement in paragraph 5.1 of the notice and its substitution with:

"Save for the brick boundary walls, demolish the rear extension."

- the deletion of the requirement in paragraph 5.2 of the notice and its substitution with:

"Restore the land to its condition before the breach took place."

- the deletion of the requirement in paragraph 5.3 of the notice and its substitution with:

"Remove from the site and properly dispose of all detritus and waste arising from compliance with steps 5.1 and 5.2 above."

- the deletion of the requirement in paragraph 5.4 of the notice and its substitution with:

"Cease the mixed use of the property."

23. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

L Perkins

INSPECTOR