



Appeal Decision

Site visit made on 28 May 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2024

Appeal Ref: APP/T4210/C/24/3336195

Lake Hill Walshaw Road, Bury BL8 1PT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Luxworth Holdings Ltd against an enforcement notice issued by Bury Metropolitan Borough Council.
 - The notice was issued on 16 November 2023.
 - The breach of planning control as alleged in the notice is without planning permission, render has been applied to the front and eastern elevations of the brick dwellinghouse and new windows and patio doors have been installed to the front elevation of the building which are not of a similar appearance to those used in the construction of the existing dwellinghouse. This includes the removal of two traditional bay windows with slate roofs to the front ground floor elevation and the removal of overhanging stone slab cils support on brick corbels to the first floor windows.
 - The requirements of the notice are to:
 - a) Permanently remove all the render to the front and eastern elevation. If the brickwork underneath the rendering is damaged, repair any damage to the brickwork and reinstate to it's [sic] previous condition.
 - b) Remove the 2 no. bay windows to the front ground floor elevation of the dwellinghouse and replace with 2 no. traditional bay windows with slate roofs.
 - c) Remove all the other windows/patio doors on the ground floor and first floor of the front elevation of the dwellinghouse and install windows that are in keeping with the character of the building and are of similar appearance of the removed windows (photo attached of how the building looked before the works took place). The first floor windows should incorporate overhanging stone slab cils supported on brick corbels.
 - The period for compliance with the requirements is: 60 days after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e), (f) and (g) 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.

Matters concerning the notice

2. An enforcement notice should be drafted so as to tell the recipient fairly, what he has done wrong and what he must do to remedy it. The appropriate test is derived from *Miller-Mead v MHLG* [1963] 2 WLR 225 – whether a notice is 'hopelessly ambiguous and uncertain so that the owner or occupier could not tell in what respect it was alleged that he had developed the land without permission or that he could not tell with reasonable certainty what steps he had to take to remedy the alleged breaches'. The appellant suggests the enforcement notice is a nullity and has drawn my attention to what it considers are errors, defects and 'loose' wording in support of its case.

3. The enforcement notice alleges that render has been applied to the 'front and eastern elevations...'. Reference to 'the front and eastern elevations' suggests more than one elevation is attacked by the notice. During my visit I saw that render has been applied to the other elevations. The property is positioned at an angle, with none of the elevations perfectly facing towards north, south, east or west.
4. Nevertheless, the Council has attached a photograph of the 'front elevation' to the enforcement notice. Since the front elevation is the only elevation which, in my view, could be considered to face towards the east, it follows that the notice can only be attacking that elevation. I therefore consider the notice could be corrected to make it clear it is only the front elevation which is being attacked by the notice. Since this would not expand the scope of the notice or make it more onerous to comply with, I consider such a correction would not cause either party injustice.
5. The allegation states that new windows and patio doors have been installed. However, to my mind, the erection of the bay windows¹, which in this case would have involved significant building works, goes beyond the installation of a window. While the notice alleges the **removal** of 'two traditional bay windows with slate roofs' it does not allege the **erection** of 2 bay windows. This is inconsistent with requirement (b), which requires the appellant to remove the 2 no. bay windows to the front ground floor elevation of the dwellinghouse.
6. Furthermore, requirement (b) requires the recipient of the notice to 'replace with 2 no. traditional bay windows with slate roofs'. No information is provided as to what these 'traditional bay windows with slate roofs' should look like or their dimensions, nor is it clear what is meant by the term 'traditional'. In this regard, I find the requirement ambiguous. Although it would be possible to correct the notice to refer to the photograph, this would not address the inconsistency between the allegation and the requirement. Correcting the allegation to refer to the erection of 2 bay windows would increase the scope of the notice, which would cause the appellant injustice.
7. Requirement (c) requires the recipient of the notice to remove 'all the other windows/patio doors on the ground floor of the front elevation and install windows that are in keeping with the character of the building and are of similar appearance of the removed windows'. However, it is not clear how many windows the appellant is required to install, what their dimensions should be or whether windows should be reinserted where there was previously no window, for example, above the bay window to the left of the front door.
8. The requirement to install windows that are 'in keeping with the character of the building' is at odds with the requirement to install windows that are 'of similar appearance of the removed windows', since windows and openings in the other elevations of the building are similar in style and appearance to those which the enforcement notice is seeking are removed on the front elevation.
9. The front door and frame are surrounded by a series of glass panels. The door is not attacked by the notice, and it is not clear whether the frame, which is a substantial feature and which also frames a series of glass panels, would need to be removed. This leaves the recipient of the notice unclear as to what they have to do. It is not clear to me that the notice can be corrected to address this

¹ Notwithstanding the appellant's argument under ground (b) that the bay windows have been modified.

uncertainty without causing injustice. Correcting the notice to include the door and its frame within the allegation and requirements would increase the scope of the notice and make it more onerous to comply with, causing the appellant injustice. Correcting the notice to specify the glass panels within the allegation and requirements would leave the frame in place and cause the Council injustice.

10. Requirement (c) also states the first floor windows should incorporate overhanging stone slab cills supported on brick corbels. However, the use of the word 'should' suggests the recipient does not have to do it. Furthermore, it is not clear what these should look like, or their dimensions. Although the requirement refers to a photograph in respect of the windows, it does not require the cills to be as shown in the photograph.
11. Given the removal of cills is identified separately in the allegation, the requirement should make it clear what the recipient of the notice must do with respect to the cills. While it would be possible to correct the notice to refer to the photograph, deleting the word 'should' and inserting the word 'shall' would make the notice more onerous to comply with and would cause the appellant injustice.
12. Given the penalties associated with failure to comply with an enforcement notice, it is essential that the requirements of the notice are clear. However, in this case, I find that they are not. While I have found the notice can be corrected to address some of the concerns raised above without causing injustice, uncertainty would remain.
13. The appellant suggests the notice is a nullity and has drawn my attention to *Payne v NAW and Caerphilly CBC* [2007] JPL 117, where it was held that having reached the conclusion that an enforcement notice did not comply with section 173 (of the Act), the Inspector had no power to vary its terms because the notice was a nullity.
14. I am mindful that, given the breadth of the statutory power under section 176 of the Act to correct error on appeal, the *Miller-Mead* approach to nullity should be confined to those cases where the failure to comply with the statutory requirements in section 173 is apparent on the face of the enforcement notice itself. Whether a defect renders the notice a nullity is a matter of judgement. Some degree of uncertainty or other defect in the relevant section of the notice does not mean that there is non-compliance with the statutory requirements. The allegation and requirements are broadly stated and so, I do not consider the notice to be a nullity. However, for the reasons given above, I consider the notice is invalid beyond correction.

Conclusion

15. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
16. In these circumstances, the appeal on the grounds set out in section 174(2) (a), (b), (c), (e), (f) and (g) 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 Savage

INSPECTOR