



Appeal Decisions

Site visit made on 23 July 2024

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 5th August 2024.

Appeal A Ref: APP/M0655/C/23/3331295

Appeal B Ref: APP/M0665/C/23/3331296

Summit Cottage, Summit Close, Lower Stretton, Warrington WA4 4NN

- The appeals are made under section 174 of the Town and Country Planning Act 1990, as amended, (the 1990 Act).
- Appeal A is made by Mrs Marissa Wotton against an enforcement notice issued by Warrington Borough Council. Appeal B is made by Mr Chad Wotton.
- The notice was issued on 19 September 2023.
- The breach of planning control as alleged in the notice is without planning permission, the construction of fencing and gates.
- The requirements of the notice are to:
 - a) Remove from the land and not return the fence and gates; OR
 - b) Reduce the height of the fence and gates in the location shown blue on the attached plan labelled Appendix A, to a height of no more than 1 metre from ground level; AND the fence in the location shown orange on the attached plan labelled Appendix A, to a height of no more than 2 metres from ground level.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the 1990 Act. 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 of Decision: No further action is taken.

The Enforcement Notice

1. The notice was issued with two plans which were largely identical except for one of the documents containing the annotation 'Appendix A'. Neither plan has a red edge, which is referred to in section 2 of the notice as the land to which it relates. Both plans have an area edged blue, which the requirements specify as the location of the gates and fencing to be altered. The steps to be taken reference fencing located in position marked orange, which is also required to be altered. The plans issued with the notice provide no such annotation.
2. The plan provided by the Council with the questionnaire showed the site with a red edge, which is a different plan to that attached to the notice as issued. The Council has provided a further plan at Appendix A of its statement, which shows the appeal site with orange and blue lines. An aerial image has also been provided for clarification.
3. In response to a query from the Appellants, the Council explained that there would appear to be a discrepancy between the correct enforcement notice plan and the plans issued. It seems that the plans received by the Appellants were attached in error.
4. The Council acknowledges the error and suggests that I use my powers under Section 176(1) of the 1990 Act to correct the notice through the substitution of the two latest plans and / or the aerial image. However, before considering

corrections I must decide whether the notice is a nullity due to a fundamental error. This would mean that there is, in effect, no enforcement notice as such and there is nothing to be corrected or subject to any ground of appeal.

5. An enforcement notice would be considered a nullity if it is defective on its face, normally by missing some vital element that a notice shall include under Section 173 of the 1990 Act. It is crucial that a notice enables the recipient to know in what respect it was alleged they had developed the land without permission and that they could tell with reasonable certainty what steps they had to take to remedy the alleged breach.
6. In this case, the steps require the alteration of the fence and gates in the location shown blue on the attached plan. The blue line on the attached plan labelled Appendix A encompassed all of the boundary to Summit Cottage, which suggests that any gates and fencing along the blue line had to be removed or reduced in height to no more than 1 metre above ground level. This is not what the Council intended. Furthermore, the requirements concern alterations to the fence shown orange. There was no such annotation on the attached plan.
7. As explained, an enforcement notice must be drafted to tell the recipient fairly what they have done wrong and must do to remedy it. The notice does not do this with clarity and upon its true construction it is hopelessly ambiguous and uncertain.

Conclusion

8. I conclude that the notice is a nullity. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (b), (f) and (g) 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.

Formal Decision

9. Since the notice is found to be a nullity, no further action will be taken in connection with the appeals. In the light of this finding, the Local Planning Authority should consider reviewing the register kept under Section 188 of the 1990 Act as amended.

D Moore

Inspector