



Appeal Decisions

Site visit made on 23 July 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2024

Appeal A Ref: APP/Z5060/C/23/3331058

Appeal B Ref: APP/Z5060/C/23/3331059

Land and premises at 7 Station Parade, Barking IG11 8ED

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Mr Katratulah Karimee against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
 - Appeal B is made by Mr Jamshid Hosseini against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham
 - The notice was issued on 14 September 2023.
 - The breach of planning control as alleged in the notice is without planning permission; the unauthorised change of the windows to uPVC double glazing, on the first floor; the change to the façade; and the installation of a staircase in the rear of the property within a conservation area.
 - The requirements of the notice are:
 - Revert the windows to match the original windows.
 - Remove the staircase to the rear of the property.
 - Revert the façade of the property.
 - Remove all consequent waste material from the premises.
 - The period for compliance with the requirements is six months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (d) and (g) of the Town and Country Planning Act 1990 (as amended).
 - Appeal B is proceeding on the grounds set out in section 174(2)(b), (d) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. 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.

Reasons

2. Section 173 of the Act sets out that an enforcement notice shall state (1)(a) the matters which appear to the local planning authority to constitute the breach of planning control, and (3) the steps which the authority requires to be taken or the activities which the authority require to cease.
3. Section 173(2) says that an enforcement notice complies with section 173(1)(a) if it 'enables any person on whom a copy of it is served to know what those matters are', being the matters alleged to constitute the breach.
4. Section 173(3) makes it clear that the enforcement notice shall specify the steps required to be taken or activities required to cease in order to achieve,

wholly or partly, any of the purposes set out in section 173(4) – to remedy the breach of planning control or remedy any injury to amenity.

5. An enforcement notice will be null if it omits to clearly state the matters constituting the breach of planning control as required by section 173(1). Similarly, if the requirements are there but ambiguous, the enforcement notice will be a nullity if the recipient 'could not tell with reasonable certainty what steps they had to take.' The appropriate test is whether the notice is hopelessly ambiguous and uncertain.
6. The allegation refers to various matters including 'the change to the façade.' The façade is the front of the building. The allegation does not clearly state what the change, being the matter which appears to constitute the breach of planning control, is. The consequent requirement to revert the façade is similarly ambiguous.
7. Defects in enforcement notices fall into two main categories: those that make it a nullity and those that may make it invalid. In the former there is in effect no notice at all and therefore nothing that can be corrected or, indeed, form the basis of an appeal.
8. As the enforcement notice fails to clearly state the matters constituting the breach of planning control and the steps required to be taken, in respect of the alleged change to the facade, this renders the enforcement notice a nullity as it does not comply with section 173(1)(a) and section 173(3). Therefore, the notice is of no legal effect, and it could not be amended under section 176, since that power could only apply to a notice which was not a nullity.

Other matters

9. The allegation refers to the change of windows to UPVC on the first floor. However, it is evident from the Council's submissions that the enforcement notice is intended to target those windows at first and second floor level in the rear elevation. This should be clear from the allegation.
10. The scope of an enforcement notice is limited by section 173(4)(a) and (b) of the Act, such that the recipient cannot be required to undertake works that would go beyond remedying the breach. No matter how the works are specified, the most that they can achieve is compliance with a planning permission or restoration of the land to its previous condition.
11. The enforcement notice does not require the UPVC windows to be removed, simply to revert the windows to match the original. This is also ambiguous since it is not clear whether that means the windows as originally installed in the building, or those previously existing. The requirement seems incomplete and excessive if the original windows were not those previously existing.
12. Had the notice not been found to be a nullity it may have been possible to correct the requirements in respect of the windows. However, correcting the allegation to include the second-floor windows would have increased the scope of the notice, making it more onerous to comply with. This would have caused the appellants injustice.
13. Section 173(10) of the Act provides that an enforcement notice must specify such matters as may be prescribed in regulations. Regulation 4 of The Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations

2002 (ENAR) states that an enforcement notice shall specify the reasons why the local planning authority consider it expedient to issue the notice.

14. The reasons for issuing the notice refer to 'The alteration to the property' causing significant harm. Whilst the limited reasoning alone would not necessarily make the notice invalid or a nullity, it is a prerequisite to taking enforcement action that it should appear expedient to the Council to do so. Accordingly, the Council should explain the harm they consider is caused by each of the developments subject of the enforcement notice.
15. Finally, section six refers to three requirements in section five, however there are four requirements. This is a typographical error.

Conclusion

16. I conclude that the notice is a nullity. In these circumstances, Appeal A on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) and Appeal A and B on the grounds set out in section 174(2) (b) (d) and (g) of the 1990 Act (as amended) do not fall to be considered.

Felicity Thompson

INSPECTOR