



Appeal Decision

Site visit made on 3 October 2024

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 9 October 2024

Appeal Ref: APP/F4410/C/23/3327507

Land at 29 Kings Road, Doncaster DN1 2LU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by MB Estate Ltd against an enforcement notice issued by Doncaster Metropolitan Borough Council.
 - The notice was issued on 29 June 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a two storey rear extension to the host dwelling on the Land.
 - The requirements of the notice are to:
 - (i) Demolish in its entirety the unauthorised two-storey rear extension shown marked in blue on the Plan;
 - (ii) Reinstate and make good the rear elevation of the original dwelling to its former condition;
 - (iii) Following compliance with steps (i) to (ii) above, permanently remove the resultant materials from the Land.
 - The periods for compliance with the requirements are: For steps (i) to (ii) two months. For step (iii) three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

The Enforcement Notice

2. S176(1) of the 1990 Act provides that any defect, error or misdescription in the enforcement notice may be corrected or the terms of the enforcement notice varied if that correction or variation will not cause injustice to the appellant or the local planning authority.
3. The breach of planning control alleged in this case is: *"Without planning permission the erection of a two storey rear extension to the host dwelling, on the Land."* The requirements of the notice are:

"(i) Demolish in its entirety the unauthorised two-storey rear extension shown marked in blue on the Plan;

(ii) Reinstate and make good the rear elevation of the original dwelling to its former condition;

(iii) Following compliance with steps (i) to (ii) above, permanently remove the resultant materials from the Land."

4. On the face of the notice the alleged breach of planning control relates to an unauthorised two-storey rear extension which the local planning authority purport to have marked in blue on the Plan attached to the notice. However, the reasons for issuing the notice¹ and the Local Planning Authority's (LPA) Statement of Case², also refer to *"...the new flat roof dormer has not been contained beneath the ridge line which creates an incongruous appearance in the street scene, causing harm to the visual amenities of the surrounding properties and character of the area. The further addition of a balcony enclosure around the flat roof projection accessed from the rear facing dormer causes adverse impacts of overlooking and loss of privacy to surrounding properties."*
5. I observed on my site visit that a substantial two/three storey rear extension has been constructed. The third storey has been created partially within the roof space and facilitated by a dormer/extension. This extension subsumes the original rear roof slope and extends in part above the two-storey rear extension. The two-storey element of the rear extension has a flat roof enclosed by a parapet wall. In addition, a front dormer has been constructed, which is also referenced as harmful in the LPA's Statement of Case.
6. The allegation at paragraph 3 of the notice does not refer to the dormer extensions, nor to the three-storey element of the rear extension. Furthermore, the notice only requires the demolition of the unauthorised two-storey rear extension shown marked in blue on the Plan. I noted on my site visit that the area marked blue on the Plan was not in the location of the unauthorised rear extension. The blue line identifies an undeveloped part of the appeal property's rear garden/yard, where no building works have taken place. The Council Officer in attendance at the site visit agreed that this appeared to be a drafting error.
7. Considering the above, including the reasons for issuing the notice, and observations on my site visit, it seems to me that the unauthorised development has been misdescribed.
8. An enforcement notice must be drafted to tell the recipient fairly what he has done wrong and what he must do to remedy it. I could amend the wording of the requirements to omit reference to the blue line on the Plan. However, the allegation in the breach has also been misdescribed and it is unclear whether the dormer extensions are being enforced against. Furthermore, if I were to correct the notice to include the part three-storey/dormer roof extensions, I would be widening the scope of the notice and there would be injustice to the appellant.

Conclusion

9. For the reasons set out above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or 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. Consequently, the enforcement notice is invalid and will be quashed. In these circumstances, the appeal on grounds as set out in section 174 (2) (a) of the 1990 Act (as amended) and the

¹ Enforcement Notice, Paragraph 4

² LPA Statement of Case, Paragraph 5, Explanatory Comments

application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended), does not fall to be considered. My decision to quash the notice does not prevent the Council of the option of issuing a further corrected notice, under the provisions of s171B (4) of the Act, should it wish to do so.

Elizabeth Pleasant

INSPECTOR