



Appeal Decision

Site Visit made on 24 September 2024

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2024

Appeal Ref: APP/W0734/C/23/3320096

30 High Gill Road, Nunthorpe, Middlesbrough, TS7 0EA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Michael O'Brien against an enforcement notice issued by Middlesbrough Council (the LPA).
 - The notice was issued on 15 March 2023.
 - The breach of planning control as alleged in the notice is, unauthorised installation of raised decking, staircase and additional fencing to the northwest side boundary between the application site and no.28 High Gill Road.
 - The requirements of the notice are:
 - Remove the unauthorised decking, stairs and fencing from the site.
 - Restore the site to the condition it was prior to the breach taking place.
 - The period for compliance with the requirements is: 12 weeks.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a) and (f) 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. Since the notice is found to be a nullity, no further action will be taken in connection with the appeal. 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.

The Enforcement Notice

2. Section 172(1)(b) of the Act states that the LPA may issue a notice where it appears to them that it is expedient to do so, having regard to the provisions of the development plan and to any other material considerations.
3. Section 173(10) of the Act states that a notice shall specify such additional matters as may be prescribed. The additional matters are prescribed in the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the ENAR).
4. Regulation 4(a) of the ENAR states that an enforcement notice shall specify the reason why the LPA considers it expedient to issue it. Regulation 4(b) states that a notice shall specify all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice.
5. There is no section of the enforcement notice which explicitly sets out the LPA's reasons for issuing it. In Section 3 of the notice, after it has set out the alleged breach of planning control, the notice states that: the works in question were substantially completed less than four years ago; that the works

are contrary to Local Plan Policies DC1(b and c) and CS5© *[sic]*; and that the LPA consider that planning permission should not be given, because planning conditions could not overcome these objections to the development.

6. It thus accords with Regulation 4(b) of the ENAR. However, the notice does not state what those objections are and thus why planning permission should not be given. Moreover, there is nothing within the notice which sets out how or why the LPA believes the development conflicts with the aforementioned policies. Beyond that the statement that the works were substantially completed less than four years ago is simply a statement of fact, not a reason for issuing the notice. Consequently, there is nothing within the notice which allows the recipient to understand why the LPA considered it expedient to take enforcement action.
7. I therefore consider that the notice fails to meet the statutory requirements of section 173(10) of the Act and Regulation 4(a) of the ENAR. It is thus defective on its face since it is missing some vital element that a notice shall include. This fundamental error renders the notice a nullity.

Conclusion

8. I conclude that the notice is a nullity. In these circumstances, the appeal on the grounds set out in section 174(2)(a) and (f) of the Act and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

J Whitfield

INSPECTOR