



Appeal Decision

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 05th November 2024

Appeal Ref: APP/L3625/C/22/3306996

Land at Boxing Booth Gym, 12-18 High Street, Merstham, Redhill RH1 3EA

- 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 P Foster, Ringside Property Ltd against an enforcement notice issued by Reigate and Banstead Borough Council.
 - The notice was issued on 17 August 2022.
 - The breach of planning control as alleged in the notice is 'Without planning permission, failure to implement permission 19/01016/F in accordance with the approved plans and thereby breaching conditions 1 and 3 of that permission, including the partial demolition of architecturally important parts of the property within the Merstham Conservation Area and the removal of the shopfront, all of which were shown on the approved plans to be retained'.
 - The requirements of the notice are: 1. Complete the development in terms of external appearance in accordance with the approved Proposed Plan Drawing number 2HS Revision P2F including (a) the reinstatement of the chimneystacks as they were before being removed from the 1st floor level and above and, (b) the removal of the ground floor plywood frontage and (c) the implementation of the shopfront as shown in the approved submission of shopfront details (Drawing AHD-001 Revision A), and (d) the removal of the first-floor plywood walls and the reinstatement of the upper floor side and rear white painted masonry walls. 2. Remove the boards from the shopfront and ensure the new shopfront is installed in accordance with the approved plans. 3. Stabilise and structurally support the original roof and front wall and site returns as the support from internal and outer walls, and the chimneystacks that have been removed.
 - The period for compliance with the requirements is: 'Six months from the date the enforcement notice takes effect- by 21st March 2023'
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the Act.
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Decision

1. The enforcement notice is quashed.

The Notice

2. It is incumbent on me to get the notice in order, even if the appellant has not raised any concerns with its validity.
3. Paragraph 1 of the notice clarifies that it relates to a breach of planning control falling within section 171A(1)(b) of the Act, which is the failure to comply with a condition or limitation of a planning permission. The description of the alleged breach refers to a failure to implement planning permission reference 19/01016/F ('the PP') in accordance with approved plans, which is claimed to be a breach of conditions 1 and 3. It refers to this as including the partial demolition of the property and the removal of the shopfront.
4. Conditions 1 and 3 of the PP do not require the approved development to be implemented or completed, but they require the development to be carried out in accordance with a list of approved plans and using the external facing

materials and details specified. Furthermore, the PP authorises replacement shopfronts, which will necessitate the removal of existing shopfronts. The removal of the shopfront, if that has taken place, is not therefore in breach of conditions 1 or 3 of the PP.

5. The description of the alleged breach is flawed in a number of ways, but the errors in the notice do not end there, as the steps required to be taken are unclear and exceed what is necessary to remedy the alleged breach. This is because the notice requires the approved development to be completed and a new shopfront to be installed in accordance with the PP, despite there being no conditions attached to the PP which require those works to be completed within a specific timescale.
6. In addition, an incorrect plan number is referred to by step 1 of the notice and step 3 appears to be missing text, which makes it ambiguous. The incorrect plan reference at step 1 can be corrected without causing injustice to any parties, but the intended text for step 3 is unclear.
7. There is a minor error at section 6 of the notice where it is implied that the notice needs to be complied with by 21 March 2023. This would have been correct had an appeal not been lodged, and the notice can be easily varied without causing injustice to any parties by deleting that date.
8. In summary, the extent of the alleged breach is unclear on the face of the notice, as are the possible outcomes the Council seeks to achieve. The Council's submissions, including its officer report, offer little information to assist in these regards. The notice does not therefore accord with section 173 of the Act and is invalid and in need of corrections. I have not been provided with suggestions as to how I could correct the notice without causing injustice to any parties using my powers under section 176(1) of the Act.
9. The notice refers to the alleged breach as including partial demolition and the removal of a shopfront, which suggests there may be other operations in breach of conditions 1 and/or 3. Changing the alleged breach to 'the partial demolition of the building, other than in accordance with conditions 1 and 3 of the PP' would therefore cause injustice to the Council by excluding any other potential unauthorised works. In any case, the extent of demolition claimed to be in breach of planning control would remain unclear.
10. It appears that the Council's main concerns are that chimneystacks have been removed, shopfronts have been boarded up, and that development at the site remains unfinished. This, however, is unclear as various external and internal walls also appear to have been demolished, which may or may not be in accordance with the PP. The removal of chimneystacks and boarding up of shopfronts would be more clearly described as separate breaches of planning control under section 171A(1)(a) of the Act, rather than a breach of conditions 1 and 3 of the PP. Even if they are a direct result of the development approved by the PP not being carried out in accordance with conditions 1 and 3, correcting the alleged breach to refer to those acts specifically in breach of those conditions would cause injustice to the appellant. This is because they may have approached the appeal differently and contested additional grounds.
11. I therefore find that the description of the alleged breach of planning control is imprecise and ambiguous, and incapable of being corrected without causing injustice to the main parties. Furthermore, the steps required to be taken by

the notice are imprecise and excessive, and they cannot be corrected without causing injustice to the appellant.

Conclusion

12. For the reasons given 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 errors in accordance with my powers under section 176(1)(a) of the Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the ground set out in section 174(2)(g) of the Act does not fall to be considered. It is open to the Council to consider taking further enforcement action under the provisions of section 171B(4) of the Act.

L Douglas

INSPECTOR