



Appeal Decision

Site visit made on 8 October 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 NOVEMBER 2024

Appeal Ref: APP/P5870/C/23/3316699

Iteru House, 19 Manor Road, Cheam SM2 7AG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Hassan Shehata against an enforcement notice issued by the Council of the London Borough of Sutton.
- The notice was issued on 17 January 2023.
- The breach of planning control as alleged in the notice is building works have not been undertaken in accordance with the approved plans that accompany conditional planning permission A2015/73235.
- The requirements of the notice are to:
 - (i) Alter the development so that the building is in accordance with the approved elevation plans attached to conditional planning permission A2015/73235 or
 - (ii) Alter and if necessary demolish the property, in order to restore the building to its original condition and design to that which existed prior to the development in association with A2015/73235 taking place.
 - (iii) Remove from the land all building materials, rubble and equipment arising from compliance with (i) and (ii) above.
- The period for compliance with the requirements is: Seven (7) months.
- The appeal is proceeding on the ground 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.

Summary Decision: The enforcement notice is quashed.

Matters Concerning the Enforcement Notice

1. Paragraph 1 of the Enforcement Notice (Notice) states that the breach of planning control falls within paragraph 171A(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act); namely that development has been carried out without the required planning permission. However, the allegation states that 'building works have not been undertaken in accordance with the approved plans that accompany conditional planning permission A2015/73235'. Paragraph 5 (i) and (ii) of the Notice also requires the building to be altered to accord with the approved elevation plans attached to the same permission or by restoring the building to its condition before the planning permission A2015/73235 works had taken place.
2. The planning permission detailed in paragraphs 3 and 5 of the Notice, referenced A2015/73235, was approved on 2 February 2016. I will hereafter refer to this as the 2016 permission. The decision notice for the 2016 permission refers to operational development consisting of the removal of the existing garage; erection of a part one, part two storey side/rear extension; a first floor rear extension incorporating a Juliette balcony; a single storey side extension and loft conversion involving a dormer extension at rear, new entrance porch and alterations to elevations. It includes four conditions, a 3

year implementation condition (Condition 1), a plans condition (Condition 2); materials to match the original building condition (Condition 3) and a condition obscuring the side elevations windows (Condition 4).

3. The allegation and requirements of the Notice appear to be at odds with paragraph 171A(1)(a) of the 1990 Act. By referring to the 2016 permission as it has, it suggests that the development has been carried out with the benefit of that permission, but that it has deviated from the approved scheme. The Council has, however, served the Notice under 171A(1)(a) of the 1990 Act. They have not made any reference in the Notice to the conditions attached to the 2016 permission. The Notice also refers to the breach occurring within the last four rather than ten years, which is consistent with a breach under section 171A(1)(a) rather than (b) of the 1990 Act. As such, the Notice is alleging development that has been carried out without the required planning permission. I must, therefore, consider the Notice and the appeal on this basis.
4. In this context, I have identified a number of defects with the Notice, which I set out below. These defects have caused me to consider the position with regard to the validity of the Notice, and whether it can be corrected or varied without causing injustice to either the appellant or the Council.
5. Section 173(1)(a) of the 1990 Act informs that an enforcement notice shall state the matters which appear to the local planning authority to constitute the breach of planning control. As already indicated, the allegation refers to 'building works' that are not in accordance with the 2016 permission.
6. I find the 'building works' description to be particularly vague, given the extent of extensions and alterations that have recently been undertaken to the property. It might well be the case that the Notice is intended to target all elements of what has recently been undertaken to the property. However, an enforcement notice should only target development, as defined in section 55 of the 1990 Act. The term 'building works' might include building operations or other operations falling within the section 55 definition, but it could also be referring to works that would not fall within the definition, such as works of maintenance and repair. I acknowledge that in the requirements, paragraph 5 step (i) refers to 'development', and not building works, but it provides no assistance in identifying with reasonable certainty what is intended to be the target of the Notice.
7. Accordingly, based on the description of the development as 'building works', I cannot be satisfied that the Notice only targets development that has been carried out in breach of planning control. As the ground (a) deemed planning application is derived from the allegation, it would need to be corrected to set out a more precise description of the unauthorised development being alleged.
8. There are also issues with the requirements of the Notice. It is evident that when formulating the steps required to remedy the breach, the Council have been mindful of the 2016 permission, and have sought to bring the development back into accordance with it. However, as drafted the Notice would not achieve this as it only requires compliance with the approved elevation plans, but not 'the terms (including conditions and limitations)' of the planning permission. In this respect, it does not comply with the purposes set out in section 173(4)(a) of the 1990 Act, and once compliance with the Notice is achieved, the provisions of section 173(11)(b) of the 1990 Act would be engaged.

9. In addition, requirement 5 (ii) of the Notice requires the demolition of the property (if necessary). I find requirement 5 (ii) to be entirely ambiguous in its instruction to do certain things 'if necessary', which introduces further uncertainty in terms of what the recipient of the Notice has done wrong and what he needs to do to remedy the breach. The development also relates to extensions and alterations to an existing property, therefore, the requirement to demolish the property (if necessary) not only creates uncertainty in what is required but also appears excessive to remedy the breach.
10. For all the reasons given above, I find the Notice to be invalid, but not so hopeless as to render it a nullity. The powers transferred to Inspectors under section 176(1)(a) of the 1990 Act include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b) of the 1990 Act, to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation will not cause any injustice to the appellants or the local planning authority. In light of the defects set out, I have considered whether I am able to correct the allegation and vary the requirements of the Notice without causing any injustice to the appellants or the Council.
11. In the Council's Statement of Case, it refers to the various deviations from the 2016 permission that it objects to, but it also refers to other deviations that it considers to be acceptable. I have considered whether I could correct the Notice to allege the elements that amount to development and the Council considers unacceptable. However, I cannot be satisfied that the alleged development I might list would comprise all of the deviations from the 2016 permission or comprise all those elements that the Council had intended to be the target of the Notice. For these reasons, I cannot conclude on how the Notice should be corrected, and if I did correct the allegation with this level of uncertainty, it is likely to cause injustice to one or both parties.
12. Further to this, I am also unable to vary the requirements without causing injustice. As the Notice alleges development without planning permission, it is suggesting that the 2016 permission has not been implemented. In this context, it is not possible to vary the requirements to amend the development to accord with the terms (including conditions and limitations) of the 2016 permission, since it would have expired before the Notice was issued. Alternatively, even if the 2016 permission had been implemented in breach of its conditions, then varying the requirement to comply with the terms of the 2016 planning permission would prejudice the appellant. The requirement would not only be more onerous, but it would also take away the deemed unconditional permission currently available to them through compliance with the Notice under section 173(1)(b) of the 1990 Act.
13. Accordingly, based on the evidence before me, the development that should be the target of the Notice is not clear to me. As a consequence of not knowing what the target of the Notice is, it is unclear what it should be corrected to and what the Notice should require to remedy the breach. As I cannot conclude on how the Notice should be corrected, I am unable to consider whether any corrections to the Notice would cause injustice to either party. Accordingly, I find the Notice to be invalid, it is not correctable and should be quashed.

Conclusion

14. For the reasons given above, I conclude that the Notice does not specify with sufficient clarity the allegation and the necessary steps required for compliance. I find that the Notice is incapable of correction and variation in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since I am unable to conclude how the Notice should be corrected and or varied. The Notice is invalid and will be quashed.
15. In these circumstances, the appeal as part of ground (a) as set out in section 174(2) of the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Formal Decision

16. The enforcement notice is quashed.

M. P. Howell

INSPECTOR