



Appeal Decision

Site visit made on 29 October 2024

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal Ref: APP/C1950/C/23/3314775

Four Oaks, Great North Road, Welwyn, Hertfordshire, AL6 0PL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
 - The appeal is made by Mr John Connors against an enforcement notice issued by the Welwyn Hatfield Borough Council.
 - The enforcement notice was issued on 21 December 2022.
 - The breach of planning control as alleged in the notice is without planning permission, alterations and a side extension to enlarge an existing building that has taken place within the last four years.
 - The requirements of the notice are:
 - (i) Demolish the building and rebuild to planning permission N6/2010/0208/FP.
 - (ii) Remove from the land all materials, debris, waste, plant and equipment associated with requirement (i) above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (e), (f) and (g) of the Act. 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 Notice

2. There are some defects in the notice.
3. The plan attached to the notice does not show the building enforced against. This by itself would not result in the notice being a nullity, as claimed by the appellant. However, a plan showing the location of the building and the alleged side extension would normally provide greater clarity in interpretation of the notice. In such circumstances a notice can often be corrected without injustice to either party under section 176(1) of the Act by substituting an alternative plan. However, there are other more problematic defects.
4. The alleged breach of planning control relates to "*alterations and a side extension to enlarge an existing building*". Hence, it does not attack whatever the existing building might be, only the alterations/extension to it. However, the requirement to remedy the breach is as set out in the banner heading above. It effectively requires the whole building to be demolished and then construction of a new (smaller) one in accordance with a planning permission granted in 2010.
5. While ordinarily a matter for an appeal on ground (f) this indicates the Council considers the whole building is unauthorised, which is clearly at odds with the

- more limited description in the alleged breach of planning control. This ambiguity is amplified in the Council's subsequent statement (para. 4.6) which also opines the existing building is an entirely new and wholly unauthorised building and in a different location to the one granted permission in 2010.
6. If the 2010 permission was never implemented, as argued by the appellant, it will have expired and hence construction of a new building in accordance with that planning permission should not form part of the requirements.
 7. Consequently, these conflicts in the notice render it invalid. This then raises the question of whether the alleged breach and/or the requirements can be corrected without injustice to either party. I had hoped that my visit to the site and to the building might help clarify matters but unfortunately it did not do so.
 8. It is the appellant's case that the building permitted in 2010 was never constructed, a larger building being built instead. It is said that building later became lawful after 4 years by way of immunity from enforcement action, before subsequently being enlarged further to its present state.
 9. The Council's submitted evidence, in conflict with the appellant's, does not provide any real clarity as to whether the notice can be corrected without injustice. For example, the considerations and issues for ground (a) and (f) will differ in respect of whether the breach relates to a whole new building; or to an extension of the original 2010 building; or to an extension of a different but lawful building, particularly so in respect of ground (a) and the different considerations resulting from each of those scenarios with regard to design, the effect on the character and appearance of the area, and to Green Belt considerations.
 10. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and 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 attempt to do so.
 11. In these circumstances, the appeals made on the grounds set out in section 174(2)(a), (d), (e) and (f) and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

Thomas Shields

INSPECTOR