



Appeal Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 17 January 2025

Appeal Ref: APP/A1530/C/22/3306598

Lexden Lodge, 26 Lexden Road, Colchester CO3 3QD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Masoud Samarbakhsh against an enforcement notice issued by Colchester Borough Council.
- The notice was issued on 11 August 2022.
- The breach of planning control as alleged in the notice is 'without the benefit of planning permission, the installation of UPVC windows and doors in a Conservation Area.'
- The requirements of the notice are
 - i. Remove all UPVC windows and doors from all elevations of the property known as Lexden Lodge, 26 Lexden Road.
 - ii. Reinstate the original windows and doors where these exist or install replica painted timber windows and doors to match those originally removed. (For the avoidance of doubt these are the original windows and doors that were removed in the photograph attached to this notice)
 - iii. Prior to reinstating the original windows and doors or installing replica windows and doors like those that were removed, you are required to seek the written approval of the Local Planning Authority to agree the details of the replacement windows /doors and a timescale for their reinstatement.
 - iv. Leave the land in a clean and tidy condition.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (g) of the Town and Country Planning Act 1990 (as amended).

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.

Matters concerning the notice

2. An enforcement notice is required to tell the person on whom it is served what he has done wrong and what he must do to remedy it¹. If an enforcement notice has ambiguous requirements, the notice fails to comply with Section 173(3) of the Act and will be a nullity as the recipient could not tell with reasonable certainty what steps he had to take to comply.
3. The allegation relates to the installation of UPVC windows and doors. There are four requirements, the first of which requires removal. Requirement ii refers to reinstating the original windows and doors where they exist or installing replica painted windows and doors to match and a photograph is provided.

¹ Miller-Mead v Minister of Housing and Local Government [1963] 2 Q.B 196

4. However, requirement iii requires the appellant to submit to the Council for written approval, details of either the original windows and doors or replica painted windows and doors prior to re-instatement and a timescale for reinstatement.
5. The wording of requirement iii means that the recipient does not know when he received the notice what the Council will approve and therefore what he has to do to comply. Once details of original or replica features were submitted, the appellant would then have to wait for the Council's written approval before being able to install the features in order to comply with the notice. There is no time limit within which the Council has to make a decision or a mechanism to appeal against a refusal to approve.
6. It is also not clear how requirements ii and iii fit together. The appellant cannot assess whether or not the requirements are excessive or whether he can comply with the requirements within the stated period for compliance. Requirement ii implies that reinstating original features or replicas that match the originals as shown on photographs would be sufficient. However, requirement iii requires the submission of details for approval of either the original windows and doors or replicas which is unclear and contradicts requirement ii. The request for a timescale for work to be carried out once approved also contradicts the time scale for compliance with the notice which is 3 months.
7. The recipient of a notice must be clear as to what must be done to remedy the breach because failure to do so is a criminal offence. Clarity is also required to enable a proper assessment of the grounds of appeal that may be lodged. Requirement iii does not do so with the required clarity and certainty when details are required to be submitted. The notice is uncertain on its face. It does not therefore comply with Section 173 of the Act. The notice is therefore a nullity.
8. The facts of this appeal have a number of similarities to the Payne² case which the parties were referred to. In Payne, there was a requirement to submit details of a scheme of levelling and planting. The Inspector found that such a requirement was insufficiently specific to comply with Section 173(3) of the Act. Having found that the requirement was uncertain on its face, the Inspector went on to vary its terms to correct the defect. However, that approach was found to be wrong by the Courts as the Inspector had no power to do so because the notice was a nullity.
9. The Council has made suggestions to correct the defect as part of this appeal. However, as with the Payne case, it is not within my powers to do that when the notice is a nullity. The defect in the notice cannot be corrected because it no longer exists.

Conclusion

10. I conclude that the notice is a nullity. In these circumstances, the appeals on ground (c) and (g) set out in section 174(2) of the 1990 Act (as amended) do not fall to be considered.

E Griffin

INSPECTOR

² Payne v NAW and Caerphilly CBC [2007] JPL 117