



Appeal Decision

Site visit made on 14 January 2025

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 5 February 2025

Appeal Ref: APP/D4635/C/24/3338067

1 Timmis Close, Wolverhampton, Sedgmoor Park, Bilston, West Midlands WV14 9XT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Manjit Johal against an enforcement notice issued by Wolverhampton City Council.
 - The notice was issued on 23 January 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission in the last four years, the erection of (in the approximate location of the yellow line on the attached location plan) post and fencing over 1m high adjacent to the highway.
 - The requirements of the notice are to:
 1. Remove the boundary treatment completely and relocate the fencing back to the original position prior to the unauthorised development, in a material agreed with the Local Planning Authority.
 2. Reinstate and make good the land to the ground level fronting the fence, with topsoil and grass.
 3. Permanently remove from the land all constituent material debris from the property relating to compliance steps above (1 & 2.)
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended) (the 1990 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 1990 Act.
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Decision

1. The enforcement notice is quashed.

Matters concerning the enforcement notice

2. Irrespective of the ground of appeal, there are several matters relating to the enforcement notice to be considered.
3. The requirements as to the content of an enforcement notice are set out at section 173 of the Town and Country Planning Act 1990 (as amended) (the Act) and in Regulation 4 of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.
4. Section 173(1)(a) of the Act requires an enforcement notice to state the matters which appear to the Council to constitute the breach of planning control. Established case law in *Miller-Mead v Ministry of Housing and Local Government* [1963] 1 All ER 4592 says that a notice must tell a recipient fairly what has been done wrong and what must be done to remedy the breach. A notice which is 'defective on its face' may be 'null' (without legal effect), but whether a defect in a notice renders it null in any given instance is a matter of judgment. The approach in *Payne v NAW and Caerphilly CBC*

EWHC 597 (Admin); [2007] JPL 117 found a notice to be a nullity because as it did not comply with s173 it could not be rescued by varying its terms. However, it is not desirable for a notice to be declared a nullity on the basis of minor technical flaws. If the defect is not material and its proposed correction would not cause any injustice, then the powers available to an Inspector to remedy the notice should be used. By implication, if the defect is material it would render the notice a nullity.

5. Section 173(1)(b) of the Act requires an enforcement notice to state the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls. The enforcement notice states in part 1 that it is issued "under section 172 of the Town and Country Planning Act 1990". Section 172(1) of the Act provides that a local planning authority may issue a notice when it appears that there has been a breach of planning control, and it is expedient to do so. Although it is apparent by the wording of the allegation that the breach falls within s171A(1)(a), this is not stated in the notice. Nevertheless, I consider this to be a minor technical flaw and one that can be corrected without injustice to the parties.
6. There are also, however, inconsistencies within the notice. It is clear from the requirements that the purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place, including by removing the boundary treatment completely and, having relocated the fence to its original position, reinstating and making good the land. To achieve that purpose the development that is enforced against must be properly described. In this case the boundary treatment comprises raised and levelled land retained by a brick wall behind which the new fence has been erected. But the breach as described is solely the erection of "post and fencing". To attempt to correct the notice so that the breach and requirements were consistent would, in my view, cause injustice to one or other of the parties.
7. But there is, in any case, a further problem with the notice that I consider renders it a nullity and therefore uncorrectable. As noted above, a notice must tell a recipient fairly what has been done wrong and what must be done to remedy the breach, and this must be clear within the four corners of the notice. Because requirement 1 requires the Local Planning Authority's agreement to the material to be used in the relocated fence, it is not possible for the recipient to know from the notice itself what needs to be done to comply with the notice. It was held in *Payne* that a requirement for a restoration scheme to be submitted for the Local Planning Authority's approval failed to comply with the statutory requirements in s173(3) and made the notice a nullity and incapable of variation. The same error affects this notice.

Conclusion

8. Although I considered correcting the notice by virtue of s176(1) of the Act, it became clear that with the degree of inconsistencies, to do so would likely cause injustice by the need to expand the scope of the notice. Notwithstanding this, the inclusion of the additional step to agree materials with the Local Planning Authority means that the notice ultimately fails in the light of the decision of the Court of Appeal in *Miller-Mead* and the *Payne* judgement, as reasoned above. The notice is therefore considered to be defective on its face and beyond correction.

9. Since the notice is found to be a nullity it will be quashed, and no further action will be taken in connection with the appeal. Accordingly, the Local Planning Authority should consider reviewing the register kept under section 188 of the Act. Should the Local Planning Authority wish to continue to pursue enforcement action, it may consider doing so by means of a fresh notice framed in the proper terms, having regard to the 'second bite' provisions of section 171B(4)(b) of the Act.

SA Hanson

INSPECTOR