
Appeal Decisions

Site visit made on 5 December 2024

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 March 2025

Appeal A Ref: APP/C5690/C/23/3326799

Appeal B Ref: APP/C5690/C/23/3326800

83 Arbuthnot Road, London SE14 5NP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Dr Mike Firth and Appeal B by Dr Lynette McKenzie against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The notice was issued on 27 June 2023.
 - The breach of planning control as alleged in the notice is the unauthorised enlargement to the rear of the property without planning permission.
 - The requirements of the notice are:
 1. Remove the enlargement to the rear of the property, reverting the property to its previous appearance.
 2. Make good all damage resulting from the compliance with the requirements of this notice.
 3. Remove all materials, debris, waste and equipment resulting from compliance with the above requirements of this notice from the land.
 - The period for compliance with the requirements is: Six months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f), and (g) 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.
 - Appeal B is proceeding on the grounds set out in section 174(2)(c), (f), and (g) of the Town and Country Planning Act 1990 (as amended).
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Decisions

1. The enforcement notice is quashed.

Application for costs

2. An application for costs was made by Dr Mike Firth and Dr Lynette McKenzie against the Council of the London Borough of Lewisham. This application is the subject of a separate decision.

The Enforcement Notice

3. Regardless of the grounds of appeal that have been advanced, I have a duty to ensure that the notice is in order. If I consider that the notice is defective, I have broad powers under the provisions of section 176(1) (a) of the Town and Country Planning Act 1990 (“the 1990 Act”) to correct any defect, error or misdescription in the enforcement notice, or to vary its terms. I can only do so however, where I am satisfied that this will not cause injustice either to the appellants or the Council. If the notice cannot be corrected, I must quash the notice.
4. Section 173(1)(a) of the 1990 Act sets out that an enforcement notice shall state the matters which appear to the local planning authority to constitute the breach of planning control. Section 173(2) states that a notice complies with subsection 1(a) if it enables any person on whom a copy of it is served to know what those matters

- are. Section 173(3) states that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, either the remedy of the breach of planning control or the injury to amenity which has been caused by the breach.
5. The notice alleges “*the unauthorised enlargement to the rear of the property without planning permission*”, and the first requirement of the notice is to “*Remove the enlargement to the rear of the property, reverting the property to its previous appearance*”. Both the allegation and requirement refer to an “enlargement” (singular) which would indicate that there has been a single enlargement which is located to the rear of the property.
 6. The recent planning history at the appeal site includes two separate planning applications. On 6 July 2021 planning permission¹ was granted for the “*Construction of a single-storey lower ground floor rear and side infill extension with extended patio area to the rear, erection of a rear dormer roof extension, installation of new conservation-style roof lights to front roof slope, replacement of all existing external windows, and conversion of the property from two flats back to its original use as a single-family dwellinghouse*”.
 7. On 26 September 2022 an application² under section 73 of the 1990 Act was refused for a “*minor material amendment to planning permission DC/21/120951 dated 6 July 2021 in order to reposition the rear roof extension towards the boundary with 81 Arbuthnot Road and install a roof light to the rear roof slope*”. An appeal³ against the Council’s decision to refuse that application was submitted and subsequently allowed on 13 July 2023.
 8. I observed during my site visit that, in terms of recent enlargements to the property, there appeared to have been a rear and side infill extension, a rear dormer roof extension, and a raised patio area constructed immediately beyond the rear elevation of the property. It was therefore evident that more than one enlargement has recently taken place to the rear of the property.
 9. The appellants contend that the alleged breach is unclear and vague. I concur and find the “*enlargement to the rear of the property*” description to be particularly vague, given the extent of extensions and alterations that have recently been undertaken at the appeal property. The first requirement in paragraph 5 of the notice is equally unclear, as it does not specify precisely what “*enlargement to the rear of the property*” is required to be removed.
 10. It is clear from the appellants case that they consider the enforcement notice to relate to the rear and side infill extension and the raised patio area. The Council’s case, however, is far from clear in this respect. The two stated reasons for issuing the notice refer to “*the enlargement of this height and size is considered unsympathetic to neighbouring properties*” and “*the enlargement by virtue of siting and excessive scale, creates an overbearing and unacceptable sense of enclosure and loss of visual amenity and privacy to the neighbouring properties*”. Both reasons could potentially be aimed at any of the enlargements recently undertaken to the property.

¹ Council Ref: DC/21/120951

² Council Ref: DC/22/127866

³ APP/C5690/D/23/3317925

11. Given its lack of detail, the “Planning Enforcement Report” dated 27 June 2023 is also of little assistance when seeking to establish, with any certainty, which enlargements the notice is intended to attack. This ambiguity is further exacerbated by the Council’s failure to provide either a statement of case or final comments in relation to this appeal, representing a missed opportunity for the Council to make their case and position clear during the appeal proceedings.
12. In *Oates*⁴ it was held that the relevant parts of an enforcement notice must inform the recipient with reasonable clarity what the breach of planning control is, and what must be done to remedy it. The notice must be clear within its four corners. Moreover, the recipient of an enforcement notice should not need to rely upon their own knowledge of what is taking place on the land at that time. It is readily apparent that, in this case, the notice does not satisfy those requirements.
13. I have given significant consideration to whether I could correct the notice and its requirements under section 176(1)(a). However, I do not know exactly what works the Council consider to be the breach of planning control, or what they expect to be done in order to remedy the breach or, as the case may be, remedy the injury to amenity. For example, I do not know whether it includes the removal of the raised patio area, rear extension, or both. The works carried out at the property also include a “rear and side infill extension”, yet there is no mention in the notice of an enlargement to the side of the property. To potentially expand the scope of the notice would cause injustice to the appellants. On the other hand, to omit a necessary element would cause injustice to the Council.
14. The necessity to precisely define the extent and locations of the alleged unauthorised operational development, and, to correct the notice requirements accordingly, would cause injustice to one or both of the main parties in the appeal. Although the notice cannot be said to be hopelessly ambiguous or uncertain to be considered a nullity, I find it cannot be suitably corrected under the terms of section 176 without injustice. Accordingly, the notice is invalid.
15. Since this is a case where the Council have misdescribed the alleged breach, they may be able to issue another enforcement notice in exercise of their “second bite” provisions under section 171B(4) of the 1990 Act.

Conclusion

16. 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 1990 Act since injustice would be caused were I to do so. The enforcement notice is therefore invalid and is quashed.
17. In these circumstances the appeals on the grounds set out in section 174(2)(a), (c), (f), and (g), and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act, do not fall to be considered.

David Jones

INSPECTOR

⁴ *Oates v SSCLG* [2017] EWHC 2716 (Admin)