



Appeal Decision

Site visit made on 14 May 2013

by Sara Morgan LLB (Hons) MA Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 May 2013

Appeal Ref: APP/T5150/C/12/2178431
31A-C Dyne Road, London NW6 7XG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr William Street against an enforcement notice issued by the Council of the London Borough of Brent.
 - The Council's reference is E/08/0464.
 - The notice was issued on 14 May 2012.
 - The breach of planning control as alleged in the notice is without planning permission, the formation of a hard surface and the erection of a boundary wall to side of front garden at the premises.
 - The requirements of the notice are:
 - STEP 1 Remove the unauthorised hard surface from the front garden area of the premises, dig/rip the land to a depth of 300 mm and remove all arisings to ensure that the surface material comprises only topsoil.
 - STEP 2 Turf over the land.
 - STEP 3 Replace any turf which is dead or dying within five years after this notice takes effect.
 - STEP 4 demolish the wall on the boundary with 33 Dyne Road to the front of the existing premises, and build a boundary wall across the entire front boundary using salvaged bricks to a height which is commensurate with original boundary walls in the street.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Preliminary

2. On 7 May 2013 a letter was sent to the appellant and the Council inviting comments on whether the requirements set out in the enforcement notice exceeded what was necessary to remedy the breach of planning control set out in the notice. No comments were received from either party within the timescale set out in that letter.

The requirements of the notice

3. The appellant has not appealed on ground (f) (that the requirements of the notice are excessive). However, an enforcement notice once upheld forms the basis of criminal liability. It is therefore important that the requirements in notices fall within the powers provided in the 1990 Act.

4. Section 173(3) and (4) of the Town and Country Planning Act 1990 require an enforcement notice to specify the steps required to be taken in order to either (a) remedy the breach alleged in the notice by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach. However, there is no statutory power to require the appellant to undertake works which would result in an improvement to the previous condition of the land before the breach took place.
5. The Council's statement says that it received complaints in June 2008 alleging "ongoing works to remove existing concrete hardstanding and install replacement tarmacadam in the front garden of the site". This indicates that the condition of the land before the breach of planning control alleged in the enforcement notice took place did not comprise an area of turf, but of some sort of hardstanding. Consequently the requirement in Step 1 of the notice, to dig/rip the land to a depth of 300 mm and remove all arisings, to ensure that the surface material comprises only topsoil, and the requirements in Steps 2 and 3, to turf over the land and to replace any turf which is dead or dying within five years, go beyond what would be required to restore the land to its condition before the breach took place, and would constitute an improvement to the land. Thus they exceed what is permitted by section 173.
6. Furthermore, Step 4 requires the building of a boundary wall "across the entire front boundary"; it is unclear whether this means the boundary between No 31 and No 33 or the boundary between the property and the back of the footway, or both. Whichever its meaning, it exceeds any requirement to remedy the breach as stated in the notice, because the breach of planning control described in the notice refers only to the *erection* of a boundary wall to the side of the front garden, and does not allege that a wall has been demolished.
7. For these reasons, the requirements in the notice exceed the statutory powers contained in section 173, and the notice is therefore invalid.
8. I have the power, under section 176(1) of the 1990 Act, to correct any defect in the enforcement notice if I am satisfied that the correction or variation will not cause any injustice to the appellant or the Council. If I corrected the requirements to require the land to be restored to its condition before the breach of planning control took place, it is not clear from the representations that the outcome would be what the Council intended when it issued the enforcement notice. Consequently, injustice could be caused to the Council.
9. For the reasons given above I conclude that the requirements of the enforcement notice do not accord with section 173 of the 1990 Act. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under ground (d) as set out in section 174(2) of the 1990 Act as amended does not fall to be considered.

Sara Morgan

INSPECTOR