



## Appeal Decision

Site visit made on 5 March 2024

**by J Moss BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 March 2024**

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**Appeal Ref: APP/B5480/C/22/3302439**

**Land known as 10 Victory Road, Rainham RM13 7RS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Elez Imeri against an enforcement notice issued by the Council of the London Borough of Havering.
  - The notice was issued on 10 June 2022.
  - The breach of planning control as alleged in the notice is: Without planning permission, the construction of an outbuilding in the rear garden.
  - The requirements of the notice are to:
    1. Demolish the outbuilding; AND
    2. Remove all rubble and debris accumulated when taking step 1 above.
  - The period for compliance with the requirements is three months after the date the notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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**Summary Decision: The appeal is allowed and the notice is quashed.**

### Applications for costs

1. An application for costs was made by Mr Elez Imeri against the Council of the London Borough of Havering. This application is the subject of a separate decision.

### The Notice

2. The appellant has made the case that the enforcement notice is a nullity. For this to be correct, the notice must be defective on its face. The appellant suggests that the requirements of section 173(10) of The Town and Country Planning Act 1990 as amended (the 1990 Act) have not been complied with. This states that:

'An enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under section 172 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 174.'

3. Section 173(10) does not require the notice to be accompanied by the explanatory notice. Instead, it makes provisions for the making of regulations that might require this. Accordingly, if the copies of the enforcement notice served did not include the explanatory note, this does not amount to a failure to comply with section 173(10) of the 1990 Act.
4. The regulations that might be made under section 173(10) are The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations

- 2002 (the 2002 Regulations). Regulation 5 of the 2002 Regulations states that 'every copy of an enforcement notice served by a local planning authority under section 172(2) of the 1990 Act shall be accompanied by an explanatory note'. It also sets out what that note should contain, which includes information as to the right of appeal under section 174 of the 1990 Act.
5. The appellant says that he received neither the explanatory note, nor the information sheet providing contact details for the Planning Inspectorate, which is referred to in the Planning Practice Guidance document on Enforcement and post-permission matters (the PPG).
  6. The copy of the notice provided by the appellant has pages numbers 1, 2 and 4, together with a site location plan referred to in part 2 of the notice. Accompanying the appeal questionnaire, the Council has provided what it says to be a true copy of the enforcement notice. This has pages number 1, 2, 3 and 4, together with a colour copy of the plan and the information sheet. The page number 3 provides the necessary information as to the right of appeal under section 174 of the 1990 Act.
  7. There is disagreement between the parties with regard to what was enclosed in the envelopes served at the appeal site. If the Council had omitted to include page No. 3 of the notice, it would have failed to comply with the 2002 Regulations. It would have also failed to comply with the PPG by not including the information sheet. However, Regulation 5 of the 2002 Regulations requires the Notice to be '**accompanied by** an explanatory note' (my emphasis), and section 173(10) of the 1990 Act also refers to the explanatory note as something that would accompany the notice. This emphasises the fact that the note is something separate from the enforcement notice. The same can be said for the information sheet, because the PPG requires it to be '**enclosed with** the enforcement notice' (my emphasis). Accordingly, if both the note and the information sheet were missing, I do not regard this as a defect on the face of the enforcement notice itself. For this reason, the notice is not a nullity.
  8. Even if I were to find that the failure to include these documents with the enforcement notice results in a defect on the face of the notice, it does not automatically follow that the notice is a nullity. What is important is whether or not this has caused injustice to any recipient of the notice. Whilst I have had regard to the Planning Inspectorate presentation from some 11 years ago, drawn to my attention by the appellant, I am satisfied that my approach is correct.
  9. In considering whether injustice has been caused, I am mindful that the appellant has made an appeal against the notice on each of the grounds of appeal set out in section 174 of the 1990 Act. Notwithstanding that his ground (a) appeal has lapsed, he has exercised his right under section 174. In addition to this, the appeal was made via the correct procedure, and was made in time.
  10. Whilst the appeal has been made by an agent, the appellant does not suggest that, if the notice had been accompanied by the necessary information regarding the right of appeal, he would not have employed the services of a professional or would have approached his appeal in a different way.
  11. I acknowledge that the notice was served on other individuals who have not made an appeal and, although the appellant has not said, these other parties

may also have received a copy of the notice that was not accompanied by the necessary information. These include Hajri Imeri, as well as 'the owner' and 'the occupiers'. However, the appellant says that Hajri Imeri is his wife. In view of this connection, it would be reasonable to expect her to have understood the right to appeal, as her husband has.

12. The appellant has also referred to 'additional occupiers' of the appeal site, although he has not specified who these individuals might be. Nevertheless, there is no suggestion that there are or were other occupiers of the appeal site that do not fall within the appellant's household, such that they would not have understood the right of appeal against the notice, as the appellant has.
13. For the reasons given above, if it was the case that the copy of the enforcement notice served on the appellant, Hajri Imeri, 'the owner' or 'the occupiers' was not accompanied by the information required by the 2002 Regulations and the PPG, I cannot conclude that injustice has been caused as a result of this. The notice is not, therefore, a nullity or invalid for this reason.
14. On a separate matter, the appellant also suggests that the notice is a nullity as he says that the Local Planning Authority did not authorise the issue of the notice. Although these comments were made in respect of the appellant's ground (e) appeal, they are not entirely relevant to the ground (e) matters and are more appropriately dealt with prior to my consideration of the grounds of appeal.
15. In this regard, I note the appellant's evidence and the conclusions reached by other Inspectors. However, I am satisfied that I could only find an enforcement notice to be a nullity if there is a defect that is evident on the face of the document. Whether or not the correct authority was obtained to issue the notice has not resulted in a defect on the face of the notice. For this reason, I am unable to assess the background to the issue of the notice. There is a channel for such matters to be considered and that is through the Courts. I do not therefore find the notice to be a nullity for the reasons suggested.

### **Ground (e)**

16. In making his ground (e) appeal, the appellant suggests that 'additional occupiers' of the appeal site were not served with a copy of the notice, as required by section 172 of the 1990 Act.
17. The HM Land Registry details provided by the Council show that the appeal site is registered under two titles. The enforcement notice contains a list of those on whom the notice was served, these include the appellant and Hajri Imeri, who are the only individuals listed as proprietors on both of the HM Land Registry details. The notice was also served on 'the owner' and 'the occupiers'. Each were served with a copy of the notice addressed to them at both 10 Victory Road and land adjoining No 10 (i.e. the two HM Land registry titles). The Council say that the appellant was present when the copies of the notice were served on 10 June 2022. It has provided a series of photographs dated 10 June 2022 showing envelopes at the appeal site.
18. The appellant says that he received two bundles of envelopes at the appeal site and that each bundle contained six envelopes. There is no suggestion that the bundles did not include envelopes addressed to the occupiers of the appeal site (i.e. addressed to both No 10 and land adjoining No 10). The appellant says he

- was told that one bundle was for him and the other for his wife and, as such, suggests that service was limited to himself and his wife as 'the registered proprietors, as owners and occupiers of the Property'. He says that the officer 'omitted to leave copies for the occupiers which he knew were in place at the property', and that 'these additional occupiers were not served'.
19. The appellant has not said who the additional occupiers of the appeal site might have been at the time the notice was served. Nevertheless, I note that it is the appellant's case that the appeal site is used as a single dwellinghouse and that the outbuilding is used in a way that is incidental to the enjoyment of the dwellinghouse. As such, any other occupiers of the appeal site at that time would have done so alongside the appellant and his wife, falling within their household.
  20. A planning contravention notice (PCN) may well have identified the name of these other individuals that occupied the site, such that a separate copy of the notice could have been addressed to them and served on them. Nevertheless, having regard to their occupation of the appeal site together with the appellant and his wife, it is reasonable to expect them to have been made aware of the notice by the appellant or his wife.
  21. The appellant and his wife might well regard themselves as the occupiers of the appeal site, as well as the owners. However, there would have been two envelopes addressed to 'the occupiers' (plural). If indeed there had been other occupiers of the appeal site at the time, it is unreasonable to suggest that the envelopes addressed to 'the occupiers' were only for the attention of the appellant and his wife.
  22. The appellant does not suggest that there are any other parties with an interest in the land to which the notice relates that were not occupiers of the site at the time the notice was served. As I note above, only the appellant and Hajri Imeri are recorded as the proprietors on the HM Land Registry details. I can also see that this is a fairly recent registration of the land and can, therefore, be relied upon as being a reasonably up to date record. The lack of the service of a PCN does not, therefore, indicate that the Council did not take reasonable steps to identify those with an interest in the land to which the notice relates.
  23. All things considered, I cannot be satisfied that those with an interest in the land that would be materially affected by the notice were not served with a copy of the notice, as required by section 172 of the 1990 Act. Even if any occupiers of the appeal site did not receive the copy of the notice intended for them, I cannot be satisfied that they were substantially prejudiced by this, having regard to the likely manner of their occupation of the appeal site with the appellant and his wife. Accordingly, and having regard to the provisions of section 176(5) of the 1990 Act, the appeal on ground (e) should fail.

### **Ground (b)**

24. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred. The enforcement notice alleges the construction of an outbuilding. The appellant suggests that an outbuilding has not been constructed. Instead, he says that an existing outbuilding has been repaired and extended with a 'small infill extension' and an 'insignificant increase in height'.

25. The appellant has provided a copy of the plans that were submitted with his application, Council reference P0175.22. Whilst only the proposed plans, rather than any existing plans, have been provided, the layout plan (drawing number PL02 Rev A) shows a blue hatched area and has been annotated, stating 'blue hatching indicates proposed area added to the existing outbuilding'. This appears to demonstrate the extent of the addition to the existing outbuilding, which is around a quarter of the footprint of the resultant building.
26. The Council concede that the allegation is incorrect and that an existing outbuilding has been extended and altered. Having regard to the evidence and having viewed the building in question, I find no reason to disagree. Accordingly, I find as a matter of fact and degree that the breach of planning control alleged in the notice has not occurred. The appeal on ground (b), must, therefore, succeed.
27. It does not, however, automatically follow that the notice must be quashed. I must consider whether I am able to correct the notice. Powers transferred to Inspectors under section 176(1)(a) of the 1990 Act include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
28. Whilst the Council suggests that the notice be corrected to allege 'extensions and alterations to a rear outbuilding', elsewhere in its statement it goes further by stating that 'the development consist of alterations and extension roof at a rear outbuilding as a separate self-contained residential dwelling[sic]'.
29. The building as I observed it was broadly laid out in accordance with the above-mentioned layout plan, with a shower room and w.c., bedroom, a room used for storage, a dining and living area, and a kitchen. As such, I find that the building has the distinctive characteristics of a dwellinghouse, in that it is able to afford the facilities required for day-to-day private domestic existence. Indeed, there appears to be no dispute that the building is capable of being used in a self-contained manner. However, the Council's position with regard to whether or not the building is being used in this way is not entirely clear. Simply because a building has the facilities for it to be used as a self-contained dwelling (i.e. as a single dwellinghouse), does not mean that it is being used as such. The appellant's position on this matter is similarly unclear.
30. Notwithstanding the above, if I were to include reference to a use as a self-contained residential dwelling in the allegation, I cannot be satisfied that the appellant would not have approached his appeal in a different manner. For example, he might have made a more certain and decisive case on this matter under a ground (b) appeal. He may also have chosen to make a ground (a) appeal. For these reasons, even if I could be satisfied that the use of the building was as a separate self-contained residential dwelling, injustice would be caused were I to correct the notice to include this in the allegation.
31. As for the matter of the extensions and alterations, whilst there is agreement that the alterations to the building include the provision of a new roof, it is not clear from the evidence whether new window and door openings have been installed or whether there has been any other material changes to the external appearance of the original building. In addition to this, there is no agreement

on the extent of the new extensions to the building. Whilst the appellant refers to a small infill extension, the plans submitted indicate that there has been an addition to the building that amounts to around a quarter of the building's current footprint. Notwithstanding this, the appellant refutes the Council's claims that the height of the building has been increased.

32. In addition to the above, whilst the Council has suggested a correction to the allegation, it has not indicated that the requirements of the notice should also be corrected. If I were to correct the allegation as suggested by the Council, but leave the requirements unaltered, I cannot be satisfied that the appellant would not have approached his appeal, ground (f) in particular, in a different manner. Although I could correct the requirements, in view of the dispute between the parties with regard to what comprises the extensions and alterations to the building, it is not clear to me what the notice should require.
33. In summary on this ground (b) appeal, there is clear agreement that the allegation in the notice is not correct. There is uncertainty with regard to what the notice should allege and the implications of any correction to the allegation for the remainder of the notice. Notwithstanding that what has been suggested for the correction is not entirely clear, I am concerned that a correction would result in a fundamentally different allegation, against which the appellant has not been afforded the proper opportunity to respond.
34. To conclude, the breach of planning control alleged in the notice has not occurred and the ground (b) appeal must succeed. I am, however, unable to correct the notice as I am not certain as to what the notice should allege. Furthermore, if I were to correct the notice in line with what has been suggested, this would cause injustice. It follows that the notice must be quashed.

### **Conclusion**

35. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.
36. In these circumstances, the appeal on grounds (c), (d), (f) and (g) do not fall to be considered.

### **Formal Decision**

37. The enforcement notice is quashed.

*J Moss*

INSPECTOR