REPORT FOR NOTING

Bury COUNCIL

Agenda Item	6

DECISION OF:	**PLANNING CONTROL COMMITTEE**
DATE:	**23 July 2024**
SUBJECT:	**PLANNING APPEALS**
REPORT FROM:	**HEAD OF DEVELOPMENT MANAGEMENT**
CONTACT OFFICER:	**DAVID MARNO**
TYPE OF DECISION:	**COUNCIL**
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	Planning Appeals: - Lodged - Determined Enforcement Appeals - Lodged - Determined
OPTIONS & RECOMMENDED OPTION	The Committee is recommended to the note the report and appendices

IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	Executive Director of Resources to advise regarding risk management
Statement by Executive Director of Resources:	N/A
Equality/Diversity implications:	No
Considered by Monitoring Officer:	N/A

Wards Affected:	All listed
Scrutiny Interest:	N/A

TRACKING/PROCESS **DIRECTOR:**

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

This is a monthly report to the Committee of the Planning Appeals lodged against decisions of the authority and against Enforcement Notices served and those that have been subsequently determined by the Planning Inspectorate.

Attached to the report are the Inspectors Decisions and a verbal report will be presented to the Committee on the implications of the decisions on the Appeals that were upheld.

2.0 CONCLUSION

That the item be noted.

List of Background Papers:-

Contact Details:-
David Marno, Head of Development Management
Planning Services, Department for Resources and Regulation,
3 Knowsley Place ,Bury BL9 0EJ
Tel: 0161 253 5291
Email: d.marno@bury.gov.uk

Planning Appeals Lodged
between 28/06/2024 and 14/07/2024

Application No.: 70600/FUL
Appeal lodged: 05/07/2024
Decision level: DEL
Appeal Type:
Recommended Decision: Refuse

Applicant: Mr Ben Gardener
Location 15 Guest Road, Prestwich, Manchester, M25 3DJ

Proposal Side dormer; Rear dormer; Single storey rear pitch roof to flat roof with parapet wall

---

Application No.: 70679/FUL
Appeal lodged: 08/07/2024
Decision level: DEL
Appeal Type:
Recommended Decision: Refuse

Applicant: Northlet Management Ltd
Location Heaton House, Brierley Street, Bury, BL9 9HN

Proposal Alterations to first floor to combine two existing House in Multiple Occupation units (HMO) into one 6 bedroom (single occupancy) House in Multiple Occupation (HMO)

Total Number of Appeals Lodged: 2

Planning Appeals Decided between 28/06/2024 and 14/07/2024

Application No.: 69581/FUL
Decision level: DEL
Recommended Decision: Refuse

Appeal Decision: Dismissed
Date: 09/07/2024
Appeal type: Written Representations

Applicant: Mr Niall Gunn

Location: Sheepgate Farm Cottage, Bradshaw Road, Walshaw, Tottington, Bury, BL8 3PL

Proposal: Modifications to roof/first floor roof extension to accommodate additional living space to first floor; Porch to front elevation; Reduction in size of existing garage; External alterations to include solar panels to front/rear roof slopes, new stone/render finish to exterrnal elevations and alterations to doors/windows/glazing with 2 no. juliet balconies to rear elevation

The Planning Inspectorate

Appeal Decision

Site visit made on 30 April 2024

by H Senior BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2024

Appeal Ref: APP/T4210/D/24/3337341
Sheepgate Farm Cottage, Bradshaw Road, Tottington, Bury BL8 3PL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Niall Gunn against the decision of Bury Metropolitan Borough Council.
- The application Ref is 69581.
- The development proposed is re roof and roof line reconfiguration. Internal remodelling & new glazing.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was submitted, the Council adopted the Places for Everyone Development Plan Document on 21 March 2024. The main parties were given the opportunity to comment on this, which I have taken into account in my decision.

Main Issues

3. The main issues are:
    - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
    - the effect on the openness of the Green Belt.
    - the effect of the proposal on the users of land to the rear of the site with regard to privacy, and
    - whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

4. The appeal site lies within the designated Green Belt and is a previously extended dwelling within a small cluster of dwellings. There is a detached garage to the north of the site with open fields to the east.

5. Paragraph 142 of the Framework outlines the fundamental aim of Green Belt policy which is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. The Framework, at paragraphs 154 and 155, sets out the

categories of development which may be regarded as not inappropriate in the Green Belt, subject to certain conditions.

6. Paragraph 154c) sets out that new buildings within the Green Belt are inappropriate unless the extension or alteration of a building does not result in disproportionate additions over and above the size of the original building.

7. The Framework does not define what a disproportionate addition would be. An assessment of whether the proposal would be disproportionate to the original building is therefore a matter of planning judgement but the overall size of the building (either in terms of footprint, floorspace or volume) is clearly an important factor. An original building, the Framework explains, is a building as it existed on 1 July 1948 or, if it was constructed after that date, as it was built originally. Policy OL1/2 of the Bury Unitary Development Plan (1997) (UDP) and guidance in the accompanying New Buildings and Associated Development in the Green Belt Supplementary Planning Document (2007) (SPD) seek to protect the Green Belt by limiting the increase in size to up to a third of the volume of the original dwelling.

8. In this case there is disagreement in the extent of the original building with the appellant including the previous extensions within the volume calculations. However, from the evidence before me, I consider the original building to be the smaller part of Sheepgate Farm Cottage which was modest in terms of its size and appearance. The extensions now proposed, in addition to those already constructed would significantly increase the volume and massing of the original building. The proposed extensions would therefore be a disproportionate addition to the existing building.

9. I acknowledge that the proposal would include removal of a conservatory and the reduction in the size of the existing garage. However, I am not satisfied that this would compensate for the increase in size of the original dwelling, beyond existing extensions, and the harm that this would cause to the Green Belt.

10. Taking the above factors into account, the proposal would be a disproportionate addition to the dwelling and would not therefore fall within the exception set out in paragraph 154c) of the Framework. It therefore follows that it would be inappropriate development in the Green Belt. It would also be contrary to Policy OL1/2 of the UDP which has similar aims.

Openness

11. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics are their openness and permanence. The openness of the Green Belt has a spatial as well as a visual aspect, so the physical and visual presence of built forms may affect openness.

12. The limited decrease in the footprint of the dwelling and part of the garage would help to reduce the spatial impact of the development in the Green Belt. However, the changes to the roof through the addition of a gable to the front and rear would increase the mass and bulk of the building at first floor level. This would alter the appearance of the building which would be more visible and prominent. Consequently, albeit to a limited degree, the proposal would, in visual terms, harm the openness of the Green Belt.

13. I therefore conclude that the development would lead to a harmful loss of Green Belt openness, contrary to the main aims of the Green Belt policy set out in the Framework.

Privacy

14. Supplementary Planning Document 6 Alterations and Extensions to Residential Properties (2010) (SPD) requires a distance of 7m between the first floor extension habitable windows and the directly facing boundary to prevent overlooking of the neighbouring property. The proposed extension would be close to the boundary of the neighbouring property and whilst there are no buildings on the land, and it is in the green belt, the appellant does not have control over it.

15. I appreciate that there are already windows at first floor that face towards this land. Nevertheless, the introduction of a Juliet balcony would lead to a greater prospect of occupants of the property standing or sitting for long periods and looking out over the land than one would reasonably expect from windows. Although there are no buildings on the neighbouring land adjacent to the appeal property there would be direct views on to it and the land is not in the ownership of the appellant.

16. For these reasons, I conclude that the proposal would have an unacceptably harmful effect on the users of land to the rear of the site with regard to privacy. It would conflict with Policy H2/3 of the UDP which amongst other matters seeks to ensure development has regard to the amenity of adjacent properties. It would also conflict with guidance in the SPD which has similar aims.

Other Considerations

17. The building is in need of renovation and modernisation and the proposal would include the rendering of the building to match the adjoining house. I also acknowledge that the reconfiguration of the dwelling would rationalise the internal space and allow the property to be suitable for family use. However, there is no substantive evidence before me to suggest that these needs could only be met by the proposed development and not by other potentially less harmful means. As discussed above, the reduction in the footprint of the built development would reduce the spatial impact of the proposal. I attach moderate weight to these matters.

Other Matter

18. The appellant has stated that pre-application advice was sought but did not include the full details of the extensions. I must consider the merits of the case before me and can give only limited weight to such discussions.

Green Belt balance and Conclusion

19. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 of the Framework states that substantial weight should be given to any harm to the Green Belt. The Framework states that 'very special circumstances' will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the development, is clearly outweighed by other considerations.

20. For the reasons set out above, the development constitutes inappropriate development in the Green Belt. Furthermore, there would be limited harm to the openness of the Green Belt and to the privacy of the users of land to the rear of the site. The other considerations put forward in support of the proposal attract moderate weight in favour of the proposal.

21. I conclude that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist and the proposal would conflict with the Framework and Policy OL1/2 of the UPD which together seek to protect the Green Belt.

22. The proposed development conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given the appeal should be dismissed.

H Senior

INSPECTOR

Details of Enforcement Appeal Decisions
between 28/06/2024 and 14/07/2024

Location: Land adjacent Mill Street, Greenmount, Bury, BL8 4BR

Case Ref: 0375 / 22

Issue: Unauthorised building works

Appeal Decision: Quashed 11/07/2024

Location: Lake Hill, Walshaw Road, Bury, BL8 1PT

Case Ref: 0183 / 23

Issue: Unauthorised building works

Appeal Decision: Quashed 04/07/2024

The Planning Inspectorate

Appeal Decision

Site visit made on 28 May 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2024

Appeal Ref: APP/T4210/C/23/3324991
Land at to the East of Mill Street, Tottington, Bury

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)(the Act). The appeal is made by Mr Simon Hall against an enforcement notice issued by Bury Metropolitan Borough Council.
- The notice was issued on 22 May 2023.
- The breach of planning control as alleged in the notice is the material change of use of the land from open countryside to residential use through the erection of timber buildings, a upvc conservatory and garden/storage structures for residential purposes.
- The requirements of the notice are to:
  a) Cease the use of the land for residential purposes
  b) Demolish and permanently remove all timber building the upvc conservatory and all garden/storage structures from the land.
  c) Following demolition required by step 5(b) above, remove all resulting materials from the Land and reinstate to its former condition.
- The period for compliance with the requirements is: 6 calendar months of this Notice.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 (as amended).

Decision

1. The enforcement notice is quashed.

Matters concerning the notice

2. The appeal site is accessed off Mill Street, via a footpath which also provides access to a number of buildings[1] which are located outside the appeal site, part of a field and an area used for the storage of plants ('the wider site'). The appeal site incorporates the remainder of the field and the remainder of the area used (at the time of my visit) for the storage of plants. A metal gate provides access to an area which comprises a number of timber buildings. During my visit I was able to see inside each of the buildings. Two of the buildings were being used for human habitation, with other buildings being used for storage or the keeping of animals (cats and chickens). A polytunnel had also been erected for the growing of plants.

3. The appellant does not dispute they are living at the site, or that they have erected a number of buildings to facilitate their residential use of the land. The appellant states they first rented the site solely to home their various animals and after 6 months, started living there mainly to protect the animals at night. The appellant states that two thirds of their buildings are solely to house animals, and this is broadly consistent with what I saw on site.

4. Section 55 (1) of the Act sets out the meaning of development. Development comprises two limbs: (1) The carrying out of building, engineering, mining or other operations in, on, over or under land; and (2) The making of any

[1] Which at the time of my visit included a building which accommodated ducks, a stable and a book library.

material change in the use of any buildings or other land. The notice appears to conflate the two limbs of development, alleging a material change of use to residential use **through the** (my emphasis) erection of timber buildings, a uPVC conservatory and garden/storage structures.

5. The reasons for issuing the notice state that the breach of planning control has occurred within the last ten years[2], rather than four, which would be the immunity period for operational development in this case[3]. This supports the position that the notice is alleging a material change of use rather than operational development. However, it is clear from the Council's reasons for taking enforcement action that it is concerned with the erection of the buildings and within its requirements, the Council requires the buildings to be removed from the land.

6. Although a notice may require ancillary or incidental works which were carried out to facilitate a material change of use to be removed, this does not extend to operational development which is fundamental to or causative of the change of use (and which is therefore not ancillary). In this case, the erection of buildings for human habitation is a separate development which, in my view, should be identified separately within the enforcement notice.

7. I have considered whether it would be possible to correct the notice so that the allegation explicitly refers to the operational development. However, it is not clear, from the four corners of the notice, which buildings the Council is concerned with. The Council suggests in its statement that there are 8 structures on the site, 4 of which are either occupied or have been occupied and 4 of which are used for storage or animal husbandry. The appellant states there are only 7 buildings on site.

8. The enforcement notice refers to 'timber buildings, a upvc conservatory and garden/storage structures **for residential purposes'** (my emphasis). The appellant disputes that all the structures are used for residential purposes, with some being used solely to house animals. It is therefore not clear that the appellant would know what they have to do to comply with the notice.

9. Furthermore, were I to correct the notice to refer to operational development, it would also be necessary to correct the time limit set out in section 4 of the notice, so that it refers to four years for the buildings. The appellant may have wished to advance a case under ground (d), and so correcting the notice in this way would cause the appellant injustice.

10. I have also considered whether it would be possible to correct the notice to just refer to the material change of use and delete requirements (b) and (c). However, there are also difficulties with the material change of use allegation, which I shall discuss below.

11. While an enforcement notice does not need to be aimed at the whole of the planning unit, when considering whether a material change of use has occurred, it is necessary to ascertain the correct planning unit, and the present and previous primary uses of that unit. The general rule is that the materiality of change should be assessed in terms of the whole site concerned. The planning unit is usually the unit of occupation, unless a smaller area can be

[2] Section 171B(3) of the Act.
[3] Section 171B(1) of the Act.

identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.

12. From the evidence and from my inspection of the site, it appears the unit of occupation goes beyond the red line boundary identified within the enforcement notice and includes the area of land between the appeal site and Tower Farm referred to above (the wider site). Although a metal gate provides some delineation, it does not coincide with the red line boundary of the site. Furthermore, the appellant clearly uses the entire site for the keeping of animals, amongst other things. The Council also mentions there being electricity and water 'extended' from the stable block. In my view, the appeal site and 'the wider site' comprise a single planning unit.

13. Both the appellant and the Council refer to the presence of animals within the appeal site. Indeed, the appellant refers to the site as an 'animal sanctuary' and a 'small farm' and an interested party refers to the appellant having 'many animals on the land'. In the Council's statement, the officer describes a visit on 22 November 2022, during which they saw a number of sheds and shacks used for storage and housing animals (a dog and a large number of black cats). The appellant suggests there are around 27 or 28 cats at the site[4] and this is broadly consistent with what I saw on site.

14. While the appellant states they do not wish the 'sanctuary' or animals to be mentioned, an enforcement notice should state fairly, what the appellant has done wrong and what they must do to remedy it. Although the keeping of cats in a residential premises is not unusual, the number of cats being housed at the site greatly exceeds that which would be found at a typical residential dwelling. Furthermore, a number of buildings appear to be used solely for the keeping of cats. The keeping of so many cats is likely to generate noise, odour and waste which is not typical of a residential dwelling. This is not, in my view, incidental to the residential use of the buildings but is a primary use in its own right and should be identified in the allegation.

15. In its response to ground (g), the Council also confirms the introduction of assorted livestock, including the 'recent introduction of chickens'. It is unclear from the Council's statement when it considers the 'assorted livestock' was introduced to the site. The appellant suggests the Officer was told the animals on site included ducks and chickens on their visit in November 2022. Reference is also made to the selling of chicken and duck eggs, which is stated to have been in place for the 'last three years'.

16. The Act states "agriculture" includes horticulture…the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purposes of its use in the farming of land)… The use of the land for the keeping of chickens and ducks (albeit the ducks were located on land outside the red line boundary during my site visit) is likely to be an agricultural use and the selling of their eggs ancillary to that use. The growing of plants is also likely to be an agricultural use and the selling of the plants grown, ancillary to that use.

17. There is also a stable located outside of the red line boundary (but within the wider site) and a field (or paddock) which is also partly within the appeal site, which is likely to be used for the exercising of horses. Although horses grazing

[4] Reference is also made to 33 rescued cats in the appellant's initial documents.

the land could be considered an agricultural use, I consider it likely the stables are comprised within the same planning unit as the land identified in the red line boundary.

18. Adjacent to the stables is a building with a poster indicating it is a 'free book library', 'Everyday 10am to 4pm'. It appears, from the evidence, that the site is accessed by members of the public. Although a residential property may receive visitors from a range of individuals, the number of visitors suggested to have been to the site is significantly different to that I would expect at a residential dwelling. It is not clear whether the book library was *in situ* by the date of issue of the enforcement notice, or the extent to which the site was accessed by members of the public.

19. I consider it likely, on the evidence before me and from my inspection of the site, that the planning unit comprises a mixed use of residential, the keeping of cats, agriculture and equestrian. There is ambiguity as to whether the wider site included the book library or the extent to which it was used by members of the public by the date of issue of the enforcement notice and therefore whether the mixed use should also refer to these elements.

20. Where there is a mixed use, it is not open to the local planning authority to decouple elements of it; the use is a single mixed use with all its component activities. I have considered whether it would be possible to correct the notice to reflect the activities that were occurring by the date of issue of the enforcement notice. However, given the ambiguity above, it is not clear precisely what this should include. Furthermore, it is not clear what the implication would be in terms of the different buildings on site, or the grounds of appeal which the appellant would have chosen to appeal on.

21. For example, the appellant may have chosen to appeal under ground (a) in respect of those buildings which have been erected solely for the keeping of livestock, since buildings for agriculture and forestry are identified as exceptions within paragraph 154 of the Framework for considering the construction of new buildings as inappropriate in the Green Belt. It is also not clear what the appellant's case would have been in respect of the keeping of cats, or the equestrian use. Correcting the notice to refer to a mixed use would therefore cause the appellant injustice.

22. Given the ambiguity regarding the precise mix of uses taking place within the planning unit at the time the notice was issued, I have considered whether it would be appropriate to change the appeal procedure to enable discussion to take place. However, given the significant concerns I have regarding the notice, I consider there would be little merit in changing the procedure if the notice is likely to be quashed anyway.

23. The allegation and requirements are broadly stated and so, I do not consider the notice to be a nullity. However, the allegation conflates material change of use and operational development and does not identify that it is in a mixed use, nor does it identify all the different components of the mixed use. For the reasons given above, I have concluded that the notice cannot be corrected without causing injustice to the appellant and is therefore invalid beyond correction.

Conclusion

24. 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 error in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.

25. In these circumstances, the appeal on the grounds set out in section 174(2)(b) and (g) of the 1990 Act (as amended) do not fall to be considered.

M Savage

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 28 May 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2024

Appeal Ref: APP/T4210/C/24/3336195
Lake Hill Walshaw Road, Bury BL8 1PT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Luxworth Holdings Ltd against an enforcement notice issued by Bury Metropolitan Borough Council.
- The notice was issued on 16 November 2023.
- The breach of planning control as alleged in the notice is without planning permission, render has been applied to the front and eastern elevations of the brick dwellinghouse and new windows and patio doors have been installed to the front elevation of the building which are not of a similar appearance to those used in the construction of the existing dwellinghouse. This includes the removal of two traditional bay windows with slate roofs to the front ground floor elevation and the removal of overhanging stone slab cils support on brick corbels to the first floor windows.
- The requirements of the notice are to:
  a) Permanently remove all the render to the front and eastern elevation. If the brickwork underneath the rendering is damaged, repair any damage to the brickwork and reinstate to it's [sic] previous condition.
  b) Remove the 2 no. bay windows to the front ground floor elevation of the dwellinghouse and replace with 2 no. traditional bay windows with slate roofs.
  c) Remove all the other windows/patio doors on the ground floor and first floor of the front elevation of the dwellinghouse and install windows that are in keeping with the character of the building and are of similar appearance of the removed windows (photo attached of how the building looked before the works took place). The first floor windows should incorporate overhanging stone slab cils supported on brick corbels.
- The period for compliance with the requirements is: 60 days after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e), (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.

Decision

1. The enforcement notice is quashed.

Matters concerning the notice

2. An enforcement notice should be drafted so as to tell the recipient fairly, what he has done wrong and what he must do to remedy it. The appropriate test is derived from *Miller-Mead v MHLG* [1963] 2 WLR 225 – whether a notice is 'hopelessly ambiguous and uncertain so that the owner or occupier could not tell in what respect it was alleged that he had developed the land without permission or that he could not tell with reasonable certainty what steps he had to take to remedy the alleged breaches'. The appellant suggests the enforcement notice is a nullity and has drawn my attention to what it considers are errors, defects and 'loose' wording in support of its case.

3. The enforcement notice alleges that render has been applied to the 'front and eastern elevations…'. Reference to 'the front and eastern elevations' suggests more than one elevation is attacked by the notice. During my visit I saw that render has been applied to the other elevations. The property is positioned at an angle, with none of the elevations perfectly facing towards north, south, east or west.

4. Nevertheless, the Council has attached a photograph of the 'front elevation' to the enforcement notice. Since the front elevation is the only elevation which, in my view, could be considered to face towards the east, it follows that the notice can only be attacking that elevation. I therefore consider the notice could be corrected to make it clear it is only the front elevation which is being attacked by the notice. Since this would not expand the scope of the notice or make it more onerous to comply with, I consider such a correction would not cause either party injustice.

5. The allegation states that new windows and patio doors have been installed. However, to my mind, the erection of the bay windows[1], which in this case would have involved significant building works, goes beyond the installation of a window. While the notice alleges the **removal** of 'two traditional bay windows with slate roofs' it does not allege the **erection** of 2 bay windows. This is inconsistent with requirement (b), which requires the appellant to remove the 2 no. bay windows to the front ground floor elevation of the dwellinghouse.

6. Furthermore, requirement (b) requires the recipient of the notice to 'replace with 2 no. traditional bay windows with slate roofs'. No information is provided as to what these 'traditional bay windows with slate roofs' should look like or their dimensions, nor is it clear what is meant by the term 'traditional'. In this regard, I find the requirement ambiguous. Although it would be possible to correct the notice to refer to the photograph, this would not address the inconsistency between the allegation and the requirement. Correcting the allegation to refer to the erection of 2 bay windows would increase the scope of the notice, which would cause the appellant injustice.

7. Requirement (c) requires the recipient of the notice to remove 'all the other windows/patio doors on the ground floor of the front elevation and install windows that are in keeping with the character of the building and are of similar appearance of the removed windows'. However, it is not clear how many windows the appellant is required to install, what their dimensions should be or whether windows should be reinserted where there was previously no window, for example, above the bay window to the left of the front door.

8. The requirement to install windows that are 'in keeping with the character of the building' is at odds with the requirement to install windows that are 'of similar appearance of the removed windows', since windows and openings in the other elevations of the building are similar in style and appearance to those which the enforcement notice is seeking are removed on the front elevation.

9. The front door and frame are surrounded by a series of glass panels. The door is not attacked by the notice, and it is not clear whether the frame, which is a substantial feature and which also frames a series of glass panels, would need to be removed. This leaves the recipient of the notice unclear as to what they have to do. It is not clear to me that the notice can be corrected to address this

[1] Notwithstanding the appellant's argument under ground (b) that the bay windows have been modified.

uncertainty without causing injustice. Correcting the notice to include the door and its frame within the allegation and requirements would increase the scope of the notice and make it more onerous to comply with, causing the appellant injustice. Correcting the notice to specify the glass panels within the allegation and requirements would leave the frame in place and cause the Council injustice.

10. Requirement (c) also states the first floor windows should incorporate overhanging stone slab cils supported on brick corbels. However, the use of the word 'should' suggests the recipient does not have to do it. Furthermore, it is not clear what these should look like, or their dimensions. Although the requirement refers to a photograph in respect of the windows, it does not require the cils to be as shown in the photograph.

11. Given the removal of cils is identified separately in the allegation, the requirement should make it clear what the recipient of the notice must do with respect to the cils. While it would be possible to correct the notice to refer to the photograph, deleting the word 'should' and inserting the word 'shall' would make the notice more onerous to comply with and would cause the appellant injustice.

12. Given the penalties associated with failure to comply with an enforcement notice, it is essential that the requirements of the notice are clear. However, in this case, I find that they are not. While I have found the notice can be corrected to address some of the concerns raised above without causing injustice, uncertainty would remain.

13. The appellant suggests the notice is a nullity and has drawn my attention to *Payne v NAW and Caerphilly CBC* [2007] JPL 117, where it was held that having reached the conclusion that an enforcement notice did not comply with section 173 (of the Act), the Inspector had no power to vary its terms because the notice was a nullity.

14. I am mindful that, given the breadth of the statutory power under section 176 of the Act to correct error on appeal, the *Miller-Mead* approach to nullity should be confined to those cases where the failure to comply with the statutory requirements in section 173 is apparent on the face of the enforcement notice itself. Whether a defect renders the notice a nullity is a matter of judgement. Some degree of uncertainty or other defect in the relevant section of the notice does not mean that there is non-compliance with the statutory requirements. The allegation and requirements are broadly stated and so, I do not consider the notice to be a nullity. However, for the reasons given above, I consider the notice is invalid beyond correction.

Conclusion

15. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.

16. In these circumstances, the appeal on the grounds set out in section 174(2) (a), (b), (c), (e), (f) and (g) of the 1990 Act (as amended) and the application

for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

M Savage

INSPECTOR