The Planning Inspectorate

Appeal Decisions

Site visit made on 11 July 2022

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 28 July 2022

Appeal A Ref: APP/C3430/C/21/3288846
Appeal B Ref: APP/C3430/C/21/3288847
Land at Willow Farm, Hollies Lane, Pattingham, Wolverhampton WV6 7HJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr G S Anning against an enforcement notice issued by South Staffordshire Council. Appeal B is made by Mrs C Anning.
- The enforcement notice was issued on 8 November 2021.
- The breach of planning control as alleged in the notice is without planning permission:
    - i. The making of a material change of use of the Land, to Land used for the siting of a caravan with a wooden extension attached to said caravan and the siting of a container unit;
    - ii. The unauthorised material change of use of the Land, to Land used for domestic residential purpose together with unauthorised operational development to facilitate the unauthorised material change of use consisting of the erection of wooden and steel mesh fencing to separate the adjoining domestic residential planning unit from the Land as marked green on the Plan;
    - iii. The unauthorised operational development consisting of an earth bund located in the position outlined in blue on the attached plan.
- The requirements of the notice are:
    - i Permanently cease the use of the Land for domestic residential purpose;
    - ii Permanently cease the use of the Land for the siting of a caravan and attached wooden extension;
    - iii Permanently cease the use of the Land for the siting of a container unit;
    - iv Permanently remove from the Land (a) the caravan and wooden extension (b) the container unit, (c) all domestic items to facilitate the unauthorised use including but not exclusively: patio/paving slabs, domestic plant pots, gas bottles, benches, non-agricultural vehicles and (d) the wooden and steel mesh fencing marked green on the attached plan;
    - v Permanently remove from the Land the earth bund from the location shaded in blue on the attached plan;
    - vi Permanently remove from the land all materials and waste arising from compliance with requirements (i) to (v) above and restore the Land to its original condition.
- The period for compliance with the requirements is six months.
- Appeal B is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 Act as amended. Appeal A is proceeding on grounds (f) and (g).

Quirements

Decision: Appeals A and B

1. The enforcement notice is quashed.

Reasons

2. The land identified in the enforcement notice, outlined in red on the attached plan, includes Willow Farm and its associated land, a caravan used for

residential purposes, a barn, a storage container, sheep feeders, livestock shelters, fencing, a car parking area and fields/grazing land. As such, the land is in a mixed use of agriculture and residential. The concept of a mixed use being two or more primary uses existing within the same planning unit or unit of occupation. It is apparent, therefore, that the enforcement notice does not describe all of the components of the mixed use taking place on the site. It alleges the material change of use of the Land to a single residential use and does not account for the agricultural use. The allegation should refer to all the components of the mixed use even if only one is required to cease. This is because, where there is a mixed use, it is not open to the Council to decouple elements of it; the use is a single mixed use with all its component activities. Even if the additional components are lawful, the enforcement notice should be corrected, if possible, to describe the mixed use properly.

3. Further, there is an inconsistency. "The Land" is that outlined in red, but the second allegation indicates the Council considers the unit of occupation to be a smaller part of the Land towards the northern boundary, differentiated by a green line on the plan. This is reinforced in the reasons for issuing the notice which describes the part of the site where the caravan is located as separate from the "associated arable land". In cases concerning a material change of use, it is necessary to establish to correct planning unit. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct and occupied for different and unelated purposes. In this case, I consider that the red line is accurate since it encompasses the agricultural holding. The land north of the green line is not occupied for purposes unrelated to the remainder of the land and so there is no logical reason why it should be considered a separate planning unit. Suggestions that it is within the notice should be corrected to avoid uncertainty.

4. The notice also targets a container and requires its removal, the inference being that it facilitates the residential use. The placing of a portable building on land may in some cases be part and parcel of a use of land or indicative of a material change of use. However, the setting up of such structures is generally regarded as a building operation. I would be minded to correct the notice to describe the container as operational development but this would require a consequential correction to specify a time limit of four years.

5. The third allegation targets an earth bund and describes it as operational development in its own right and, thus, subject to the four year rule. This is an accurate description.

6. I have considered whether I could use my powers of correction under Section 176(1) of the 1990 Act to address the misdescriptions. This would require a correction to allegations (i) and (ii) along the lines of – the making of a material change of use of the Land to a mixed agricultural and residential use; including the siting of a caravan with a wooden extension for residential purposes, fencing and domestic paraphernalia to facilitate that change of use. This would ensure the mixed use and facilitating development was properly described, without alleging it in its own right. The facilitating development would then be subject to the same timescale as a change of use under Section 171(B)(3), which is 10 years.

7. The Courts have held that an enforcement notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or they would be permitted development or immune from enforcement, so that the land is restored to its condition before the change of use took place[1]. The notice could thus require the residential use to cease and the removal of the facilitating development.

8. Also, if the additional agricultural component is lawful as indicated by the Council, the requirements would not be varied to require that element of the use to cease, and the prospect of planning permission being granted by virtue of Section 173(11) would be of no concern.

9. The Council indicates that I could correct the enforcement notice to address any misdescriptions without injustice. However, the corrections would be relatively wide ranging. I have identified inaccuracies extending to the identification of the planning unit, the allegation and the time limits, and consequential corrections to the requirements. Correcting the allegation in such a case could have implications for the parties' cases on grounds (a) and (f), and there may also be additional legal grounds of appeal. On ground (a), the merits of use for a mixed use may differ from the merits of residential use alone. In relation to legal grounds, there may be issues with the alleged use of container since it seems to be used to store fertiliser etc. Changing the time limits for the container may invite an appeal on ground (d), which is also indicative of injustice.

10. Therefore, due to the extent of the required corrections, I do not consider that I could use my powers without injustice to both parties. I accept that the notice tells what the recipient fairly what they have done wrong and must do to remedy it, which is the test described in *Miller Mead*[2], and so the notice is not a nullity. However, it is incapable of correction and hence invalid.

Conclusion

11. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance and the land where the breach of planning control is alleged to have taken place. 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. In these circumstances the appeals under grounds (a), (f) and (g) as set out in section 174(2) 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.

Debbie Moore

Inspector

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[1] *Murfitt v SSE* [1980] JPL 598, *Somak Travel v SSE* [1987] JPL 630.
[2] *Miller Mead v MHLG* [1963] 1 A11 ER 459.