
Appeal Decisions

Site visit made on 12 December 2016

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 11 January 2017

Notice A: Appeal Ref: APP/L1765/C/16/3150534

Land at Woodlea Nurseries, Wintershill, Durley SO32 2AH

- 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 Eric Newbury against an enforcement notice issued by Winchester City Council.
 - The enforcement notice was issued on 20 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a raised platform and sheds/garden building (the raised platform/decking area and sheds/garden buildings are adjacent to a mobile home on the land).
 - The requirements of the notice are:
 - i) Remove the raised platform and sheds/garden buildings (adjacent to the mobile home) from the land.
 - ii) Remove from the land all debris, waste and building material together with all plant, equipment and machinery associated with step (i) above.
 - The period for compliance with the requirements is two calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Notice B: Appeal Ref: APP/L1765/C/16/3150535

Land at Woodlea Nurseries, Wintershill, Durley SO32 2AH

- 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 Eric Newbury against an enforcement notice issued by Winchester City Council.
 - The enforcement notice was issued on 20 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission, change of use of the land from agriculture to a mixed use comprising agriculture and:
 - i) The siting of a residential caravan/mobile home (approximate position shown hatched blue on the plan attached to the notice) and
 - ii) For the storage of shipping containers and
 - iii) For non-agricultural business use(s).
 - The requirements of the notice are:
 - i) Remove the caravan/mobile home from the land.
 - ii) Cease the use of the land for the storage of shipping containers and remove the shipping containers from the land.
 - iii) Cease the non-agricultural business use(s) of the land and remove from the land all non-agricultural vehicles and trailers brought onto the land for purposes unrelated to the agricultural use of the land.
 - iv) Remove from the land all domestic paraphernalia, debris, waste and building material together with all plant, equipment and machinery
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associated with steps (i), (ii) or (iii) above.

- The period for compliance with the requirements is two calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decisions

Notice A: Appeal Ref: APP/L1765/C/16/3150534

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.

Notice B: Appeal Ref: APP/L1765/C/16/3150535

2. The enforcement notice is quashed.

Application for costs

3. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

The Notices

4. The principle established by *Miller-Mead*¹ is that a notice must tell the recipient fairly what s/he has done wrong and what s/he must do to remedy it. The appellant considers that neither notice does so and that each is therefore a nullity. The Council does not agree. I deal with these matters first.

Notice A

5. The land that is edged red on the notice plan is part of what the appellant contends is a much larger planning unit. In December 2005 a certificate of lawful use or development (LDC)² was issued by the Council. This confirmed the lawfulness of 19 buildings or structures and further confirmed that another six were authorised by planning permissions that were identified.
6. Within the area of land to which the notice relates there are a number of buildings and structures. From the evidence before me it is only the polytunnels that are lawful by virtue of the LDC. The others, most of which are shown in the Council's photographs, include a mobile home, a touring caravan, two open-fronted buildings used to store logs, a dog kennel, a domestic-style shed used as a mess room/rest area, a Porta-loo and three steel shipping containers. The latter may be considered as 'buildings' as a matter of fact and degree judgement dependent on the circumstances in each case. From the evidence, none of these would appear to have planning permission.
7. The breach alleged and the requirements are set out in the summary details above. The structures to which it refers are not marked in any way on the notice plan. This contrasts with notice B where the approximate position of the mobile home is shown. Their position is described only by reference to their proximity to the mobile home. Furthermore, within the breach there is one reference to 'sheds/garden building' (singular) and another to 'sheds/garden buildings' (plural). The requirements refer to 'sheds/garden buildings'.

¹ *Miller-Mead v Minister of Housing and Local Government* [1963] 1 ALL ER 459

² Ref: 05/01574/LDC

However, in the reasons for issuing the notice reference is made only to 'garden buildings'.

8. The appellant understands what the raised platform/decking refers to and by the time of my site visit this had been reduced in extent to now provide steps only into the mobile home. In relation to the other components of the breach alleged I consider the following to be material.
9. The Council wrote to the appellant on 26 November 2013 referring to a recent site visit. In summary, it identified the following breaches of planning control:
 - (a) Mobile home and surrounding raised platform.
 - (b) Three large shipping containers let out to paying customers.
 - (c) Wood cutting business and resulting log storage.
 - (d) Recent building constructed for storage of said logs.
 - (e) Car preparation and storage business.
10. There is no reference to the 'sheds/garden building(s)' adjacent to the mobile home.
11. In a follow-up letter dated 18 March 2014 enforcement action is threatened if the unauthorised development is not removed and the unauthorised activities do not cease. The unauthorised development/activities are stated to be those '...detailed in my letter...'. The 26 November letter is cited.
12. On 22 February 2016 the Council issued a Planning Contravention Notice (PCN). The suspected breaches asked about were in summary:
 - (a) The mixed use of the land.
 - (b) The mixed use of the land including as a store for shipping containers.
 - (c) The raised platform/veranda adjacent to the caravan.
 - (d) The erection of a timber-framed building (pole barn).
13. Again, there is no reference to the 'sheds/garden building(s)' adjacent to the mobile home.
14. It is not clear if 'sheds/garden building(s)' is meant to refer to a structure(s) to which either term could be applied or whether it means both sheds and building(s). If it means the latter, then 'shed' could be a description of the buildings used to store logs. In the original grounds of appeal the appellant confirms that the ground (c) appeal does not relate to the raised platform and decking and refers only to the 'shed' used as a rest room/mess room. There is no reference to the kennel.
15. In the appeal statement, the appellant takes 'a guess' at the building to which the notice relates and argues why it does not amount to development requiring planning permission. Again, reference is only to the rest room/mess room, not the kennel.
16. In its appeal statement the Council refers to 'two outbuildings' adjacent to the mobile home and notes the use of each. It continues however only to refer to what the appellant says is the rest room/mess room describing this as 'the shed' and confirming its view that 'the shed' requires planning permission.

17. It is not until the Council's final comments that it states unequivocally that the notice relates to both what it now describes as 'an ancillary utility room to the mobile home' and a 'dog's kennel'.
18. Taking the notice in isolation I consider that it would be reasonable to assume that the structures attacked by it were the rest room/mess room and the kennel. These are the buildings adjacent to the mobile home. It would nevertheless require the recipient to make an assumption. However, in the context of all the previous correspondence referred to above such an assumption would not necessarily be reasonable since neither structure has ever been identified by the Council as causing concern.
19. Moreover, as stated above, there are several other buildings within the notice land that do not appear to be subject of the LDC or a specific planning permission. One, the log store, has been identified as unauthorised by the Council in both correspondence and the PCN. It would, in my view, be equally reasonable to assume, in all these circumstances, that the notice related, in part at least, to one or both of the log stores.
20. I appreciate that the Council has finally made clear which buildings the notice attacks. However, that is well after the appeal was made. When issued, the notice was, in context, hopelessly ambiguous. I therefore consider that it failed the *Miller-Mead* test and is thus a nullity.

Notice B

21. Paragraphs 2.10 and 2.11 of Circular 10/97³ stated that where a mixed use of the land was alleged, all the components of that mixed use had to be specified, whether or not they were lawful. This was primarily for the purposes of the deemed planning application (not in play here) and of under-enforcement and the consequent effect of s173(11) of the Act. Circular 10/97 has since been cancelled by the Planning Practice Guidance. Nevertheless, where the advice contained within it derived from case law and that remains the settled case law there would appear to be no basis for not giving weight to the Circular advice even if it has not been carried forward into the PPG.
22. In this context a judgement⁴ in a permission hearing considered those paragraphs and applied them. At issue in that case was the use of the word 'including' in the mixed use alleged. The notice was quashed on the basis that this created uncertainty as to the precise make-up of the mixed use alleged. It is a detailed judgement to which considerable weight should be given.
23. In my judgement, the use of the term 'For non-agricultural business use(s)' introduces an equivalent level of uncertainty. It is implicit through the use of both the singular and the plural that the Council is unclear as to the nature of the non-agricultural uses. Moreover, the very term is vague in context. The Council's own evidence (which is referred to in my consideration of notice A) shows that there is what it considers an unauthorised wood cutting business taking place. This should therefore be included within the mixed use described whether or not it is considered to be non-agricultural.

³ Enforcing Planning Control: Legislative Provisions and Procedural Requirements

⁴ *The Queen oao East Sussex CC v Secretary of State for Communities and Local Government, Michael and Gary Robins* [2009] EWHC 3841 (Admin)

24. Furthermore, on the Council's own evidence, the alleged use 'the storage of shipping containers' is wrong. The use is the siting of storage containers for a specific purpose (letting for storage by others) which is different.
25. It is open to me to use the powers available in s176(1) of the Act to correct the notice provided that no injustice would be caused to either party in so doing. I do not believe that in this case it would be possible for me to do so.
26. First, from the evidence before me, I could not be sure in doing so that all the uses being carried on in the planning unit as a whole had been specified. Second, widening the scope of the allegation to include additional or at least clear uses within the mix would need to be matched by an equivalent widening of the requirements to avoid the effect of s173(11) once the requirements were complied with.
27. Adding to the requirements would make the notice more onerous. That would clearly cause injustice to the appellant since there may then be other grounds of appeal available which have not been pleaded. However, not to add to the requirements would cause injustice to the Council since the effect could be an unconditional planning permission for any use specified in the breach alleged but not required to cease.
28. I therefore consider that the notice is invalid and incapable of correction without injustice.

Conclusions

Notice A

29. I have concluded that the notice is a nullity and in these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended do not fall to be considered.

Notice B

30. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and 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. In these circumstances the appeal under grounds (c) and (f) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Brian Cook

Inspector