
Appeal Decision

Site visit made on 30 May 2017

by K R Saward Solicitor

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

Decision date: 14 June 2017

Appeal Ref: APP/V2635/C/16/3163405

Land Adjacent to 36 Beach Road, Snettisham, Norfolk

- 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 Peter Page against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The enforcement notice was issued on 10 October 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of Land from countryside to a mixed use of countryside and use for the stationing of caravans and associated paraphernalia used for residential/domestic purposes.
 - The requirements of the notice are:
 1. The use of the Land for the stationing of caravans and associated paraphernalia being used or intended to be used for residential purposes permanently ceases.
 2. All caravans and associated paraphernalia being used or intended to be used for residential purposes are permanently removed from the Land.
 - The period for compliance with the requirements is 6 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.

Matters relating to the notice

2. There is a typographical error in paragraph 2 of the notice where it specifies that the notice relates to "Land at Land Adjacent to 36 Beach Road...". The words "Land at" require deletion.
3. The allegation is for "the material change of use of Land from countryside to a mixed use of countryside and use for the stationing of caravans and associated paraphernalia used for residential/domestic purposes." "Countryside" is not a use of land and so the allegation cannot be correct. During my site visit I noted a building of utilitarian appearance on part of the site identified in the notice. The appellant refers to this as "the farmyard/operator's licence area". I sought clarification from the Council on the use of the land and afforded the appellant opportunity to comment.
4. Both parties suggested the word "countryside" be replaced with "agriculture/agricultural"¹.

¹ The Council suggested "agricultural/grazing". Without details of the type of grazing, I consider that the term "agriculture" covers most forms of grazing.

5. The stationing of caravans is not a use of land which amounts to development. It is the use of the caravans for residential/domestic purposes which is the use attacked by the notice. The allegation and requirements should match. The allegation concerns residential/domestic use whereas the first requirement is to cease the residential use only. In response to my query over the distinction sought to be made between 'residential' and 'domestic' uses the Council requested that the word 'domestic' be deleted from the allegation.
6. A notice can only require cessation of the use identified in the notice that has occurred in breach of planning control and not one that might occur. Whilst the notice can require removal of caravans that facilitate an unlawful use, it cannot require removal of caravans "intended to be used" for residential purposes. Those words should be deleted from the second requirement of paragraph 5. If caravans were subsequently used for residential purposes then such use would be caught by the notice once it comes into effect.
7. Whilst not an issue between the parties, I note that the reasons for issue of the notice fail to identify which national policy is offended in terms of flood risk.
8. Aside from the above, there are further matters concerning the notice. The appellant has challenged the accuracy of the plan attached to the notice. It does not encompass the entirety of the appellant's landholding, but a large part of it. It includes an area extending alongside Beach Road, which the appellant describes as the farmyard and operator's licence area, along with a large open field. The appellant claims that there is a designated area for caravans to which the notice should be confined. Copy aerial photographs have been produced on which the appellant has outlined the area in question.
9. The notice should be directed towards the planning unit. It is consistent with case law including the judgment in *Burdle*² that the planning unit should be determined with regard to the unit of occupation, and the concept of physical and functional separation. Three broad categories of distinction were identified in *Burdle*. Firstly, a single planning unit where the whole unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary. Secondly, a single planning unit where the whole unit of occupation is in a mixed use because the land is put to two or more activities and it is not possible to say whether one is incidental to another, or, in the case of a composite use, where the component activities fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land. Thirdly, the unit of occupation comprises two or more physically separate areas that are occupied for substantially different and unrelated purposes, in which case each area is used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.
10. In *Burdle*, it was suggested that it may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.
11. In this instance, there is a single access point off Beach Road. If the stationing of caravans has been focussed in one part of the field only, that area is not readily apparent on the ground. There is no clearly distinguishable area in

² *Burdle v Secretary of State for the Environment* (1972) 1 WLR 1207.

residential use to divorce it from the remainder of the area in occupation. It appears as though part of a wider field.

12. A number of the appellant's witnesses have provided statements to say that caravans were always within the area identified by the appellant. From Council inspections on various dates between 2014 and 2016, officers report additional caravans outside the area denoted by the appellant. This is supported by photographs which provide persuasive evidence that caravans have not been confined to one specific part of the site. It follows that the notice should not be directed to that smaller area. Indeed, it appears the area could have been more widely drawn to include the whole field to correspond with the landholding unless the excluded land is physically and functionally separate.
13. I have considered whether the building and yard form a separate planning unit from the remainder of the field. Besides being a 'farmyard', the appellant indicates this part of the site is also in use as a goods vehicle operating centre. The building and yard are outlined by the appellant on an aerial photograph and annotated 'farmyard and operators licence area'. The aerial photographs show an area around the building where there is no grass. However, there is nothing to indicate that agricultural use has been restricted to this area. Moreover, there are also photographs showing caravans within the yard.
14. There is clearly functional separation between the agricultural/goods vehicle operating centre and residential uses, but I am not satisfied on the evidence that there is sufficient physical separation for there to be more than one planning unit. To my mind there is a mixed use of a single planning unit.
15. The notice makes no mention of this other use as a goods vehicle operating centre. Where there is a mixed use the notice should include all uses making up that mixed use. Therefore, any such use should be included within the description of the mixed use whether or not it is being attacked by the notice.
16. From the information before me, it is unclear whether a goods vehicle operating centre is an authorised use of the land. If I were I to amend the allegation to include the goods vehicle operating centre then the effect of section 173(11) is that unconditional planning permission would be treated as having been granted for that use once there is compliance with the requirements of the notice. The Council has not had opportunity to consider that position. By the same token, not only has the appellant not had opportunity to comment on inclusion of another use within the notice, he may have wished to appeal on other grounds. The appellant would clearly be prejudiced if I were to widen the scope of the requirements.
17. Furthermore, there is some suggestion by the appellant that there has been a use of the site by holidaymakers. That is not the same as a residential use which is what the enforcement notice is directed at. It raises the possibility of a further use as a caravan site for holidaymakers to which the notice has not been directed.
18. The notice cannot be corrected without injustice being caused to the parties.

Conclusion

19. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. 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 ground (d) as set out in section 174(2) of the 1990 Act as amended does not fall to be considered.

KR Seward

INSPECTOR