

Appeal Decision

Site visit made on 13 July 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 27 July 2017

Appeal Ref: APP/J1860/C/16/3163214

Land adjacent to Three Acres, Willow Road, Martley, Worcester WR6 6PS

- 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 Jonathan Dew against an enforcement notice issued by Malvern Hills District Council.
- The enforcement notice was issued on 13 October 2016 under ref. E/15/00068/COU3.
- The breach of planning control as alleged in the notice is set out as follows:
"Without planning permission the unauthorised change of use from agricultural to a mixed use comprising agricultural purposes, hobby related storage, restoration of vehicles and trailers, siting of storage containers and a commercial vehicle trailer home."
- The requirements of the notice are set out in paragraphs 5.1 and 5.2 and are to:
"Permanently cease the use of the Land for hobby related storage, restoration of vehicles and trailers and the siting of storage containers and a commercial vehicle trailer home."
"To remove the vehicles, trailers, storage containers and trailer home from the Land edged red and reinstate the Land for the capability of agricultural use."
- The period for compliance with the requirements is "**3 calendar months**".
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.

Decision

1. The enforcement notice is quashed.

Preliminary matters

2. Given the circumstances described in his agent's letter of 24 April 2017, the appellant's statement of case was accepted by the Planning Inspectorate even though it was technically one working day late of an already extended deadline. The appeal on ground (c) was added at that stage.
 3. A separate enforcement notice was also issued (under ref. E/15/00127/PHY3) on 13 October 2016. That notice attacks various operational developments at the appeal site – building/workshop, hardstanding and timber gates and fencing at the site access – and it became effective on 17 November 2016 after the Planning Inspectorate decided that a formal appeal had not been lodged against it. This appeal decision is not therefore concerned in any way with that enforcement notice and can have no direct bearing upon it.
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Various matters concerning the enforcement notice

4. Enforcement notices should be drafted with precision and not lead to ambiguity or unintended consequences. There are several problems with this notice.
5. Three Acres is a two-storey detached house situated in a countryside location not far from the junction between Willow Road and Hope House Lane. A public footpath runs from that latter lane across a field at the back of Three Acres. The appellant also owns several small fields to the south-west and west of Three Acres. This agricultural land is currently being used in part for the keeping of pigs and in part for the appellant's hobby of restoring classic HGVs which are taken to shows or rallies.
6. The land edged red on the plan attached to the enforcement notice identifies a single unit of occupation being the house, the domestic garden and the agricultural land. In all probability and perhaps understandably, this plan may have influenced the appellant's thinking and approach for this appeal. He has proceeded on the basis that the red-edged land is the planning unit so that it includes the dwelling house, garden and agricultural land as such.
7. However, the enforcement notice itself, when read as a whole, points to a different interpretation. At the beginning of paragraph 2 in the notice the land to which the notice relates is described as "Land adjacent to Three Acres". It seems to me that the only land that could be so described is the agricultural land the appellant owns next to Three Acres. In such terms, it would not include the residential property or the established domestic garden around it.
8. In paragraph 3 of the notice, the alleged breach of planning control identifies only an unauthorised change of use from "agricultural" to a mixed use comprising agricultural purposes and various hobby related activities and items. Apart from the fact that the notice should have included the word "material" before the word "change", the notice quite clearly only contemplates agriculture as being the existing lawful use it is concerned with.
9. The reasons for issuing the notice at paragraph 4 go on to refer to a use "unrelated to the agricultural use of the Land" and to the "non-agricultural element of the mixed use of the Land".
10. In paragraph 5 concerning the requirements, reinstating "the Land for the capability of agricultural use" is a requirement which lacks certainty as to what is required in practice, but whatever it means, it could not be applied to the lawful residential land which has been included in the plan attached to the notice. Moreover, hobby related storage, vehicles and storage containers could not be kept within the residential curtilage of Three Acres; such an outcome has no logic in reality.
11. All this suggests to me that the plan attached to the notice is flawed because it has included the residential land. There is no reference to a residential use anywhere in the notice. When the notice and the plan attached to it are read together there is a notable degree of ambiguity as to what might make up the planning unit as such, thus affecting the next question as to whether a material change of use of a planning unit has taken place.

12. Simply put, if the written text of the enforcement notice is followed then in all probability it points to two physically separate and distinct areas being occupied for substantially different and unrelated main purposes. Each of them ought to be considered as a separate planning unit – the agricultural land upon which the alleged hobby uses have been carried on and the residential land. In point of fact, the agricultural land is clearly separated from the residential land in physical terms. Moreover, each main use is served by its own vehicular access, timber boarded gates being fitted across the wide agricultural access. The dwelling at Three Acres benefits from two quite separate vehicular accesses a short distance to the north-east of the agricultural access. No agricultural use takes place within the clearly defined residential curtilage and the parties confirmed at the site visit, what I have read, that none of the activities enforced against have taken place within the residential curtilage. This scenario would however require a significant change to the plan attached to the notice.
13. In the alternative, if the plan is followed then the appellant's suggestion that the entire unit of occupation should be considered as one whole planning unit based on the red-edged area would gain traction. This scenario would however require significant changes to the text of the notice.
14. I have considered whether I could correct the notice but under section 176 of the 1990 Act as amended my power to do so is constrained by the need to ensure that any correction will not cause injustice to the appellant or to the local planning authority. I find that the more likely scenario is the one I have laid out in paragraph 12 above and if I were to correct the notice/plan to reflect it there is likely to be injustice caused to the appellant because his case rests on the single unit of occupation containing the house, garden and agricultural land together.
15. Beyond this, I have other concerns about the imprecision of the notice. I am not clear what the "hobby related storage" is unless it is the storage of lorries or HGVs. Neither lorries nor HGVs are mentioned in the notice. Restoring "vehicles" would not be a breach if they were agricultural vehicles used by the appellant on the agricultural land but the type of vehicle is not specified. Setting aside the "commercial vehicle trailer home" (or "articulated caravan unit" in the appellant's ground (b) appeal), "trailers" in general have apparently not been restored on the land according to the appellant's representations and to the Council's own photographs. The vehicles that might look like trailers appear to be flatbed trucks. There are three shipping-style storage containers on the site but the notice does not specify the storage uses to which they are put, their number or the number of them that should be removed. A removal of two "storage containers" could arguably comply with the notice leaving one in place. Corrections and variations to the notice would need to be very significant in terms of their scope and number in order to cover these various aspects; again this is likely to result in injustice to one or both parties.

Conclusion

16. Looking at all these matters in the round, I conclude, for the reasons given above, 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 is alleged to have taken place. It is not open to me to correct the errors 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 (a), (b) and (c) 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.

17. This does not prevent the local planning authority, having taken account of this decision, from issuing a further enforcement notice, if it is considered expedient to do so.

Andrew Dale

INSPECTOR