

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: 08 August 2017

Appeal Ref: APP/W1850/C/16/3160188

Land at Doward Farm, Whitchurch, Ross-on-Wye, Herefordshire HR9 6DU

- 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 Mark Dew against an enforcement notice issued by Herefordshire Council.
 - The notice was issued on 30 August 2016 under ref. EN/2016/002415/ZZ.
 - The breach of planning control as alleged in the notice is set out as follows:
"Without planning permission the unauthorised material change of use of land from agricultural to a mixed use of agricultural and for siting of numerous old/scrap cars, vans and non-agricultural vehicles."
 - The requirement of the notice is to:
"Permanently remove the numerous old/scrap cars, vans and non-agricultural vehicles (from the area shaded in blue as shown on drawing 1 – site location plan) from the land (as shown on the attached drawing 2 – site location plan edged in red) thereby causing the cessation of its (sic) mixed use on the land."
 - The period for compliance with the requirement is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (g) 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.
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Decision

1. The enforcement notice is quashed.

Preliminary matters

2. I briefly outlined my concerns about the construction of the enforcement notice and its attached plans at the site visit on 13 July 2017. In response to the Council's email of 14 July, these concerns were subsequently set out in writing in a letter from the Planning Inspectorate dated 17 July. One option suggested was for the Council to withdraw the notice. A deadline of 28 July was given for this.
3. As no response had been received from the Council, a reminder letter was sent out on 28 July. A further email from the Council was issued on 31 July. I have noted the contents of that email but the notice was not withdrawn.

Various matters concerning the enforcement notice

4. Enforcement notices should be drafted with precision and not lead to ambiguity or unintended consequences.
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5. Doward Farm consists of several fields and a group of buildings in the Wye Valley Area of Outstanding Natural Beauty (AONB). The Council appears to agree with the appellant that there are also areas on the farm where the siting of numerous old/scrap cars, vans and non-agricultural vehicles has become lawful owing to the passage of time. However, those areas that might be agreed upon have not been specified in exact terms and it is somewhat regrettable that there is no certificate of lawfulness in place to otherwise confirm the position formally.
6. The land to which the enforcement notice relates and therefore to which the alleged breach of planning control and the deemed planning application relate is the red land as shown on drawing 2 attached to the notice. This is the whole planning unit of Doward Farm. The notice at paragraph 5 only requires remedial action in respect of the blue land shown on drawing 1. The blue land is a very small area within the red land, as also shown on drawing 2, and from what I saw it appears to be exclusively used for the siting of numerous old/scrap cars, vans and non-agricultural vehicles. In strict terms, the blue land does not appear to have a mixed use as such, but the planning unit of Doward Farm has a mixed use when viewed as a whole and as alleged in the notice.
7. It is indeed clear from what I saw and the written material on the file that the appellant's collection of numerous old/scrap cars, vans and non-agricultural vehicles extends well beyond the blue land. Compliance with the requirement at paragraph 5 of the enforcement notice would not bring about a cessation of the alleged mixed use on the land as claimed within that paragraph. The appellant made representations to this effect to the Council in September 2016 shortly after the notice was issued. Similar problems were identified with an earlier enforcement notice which was subsequently withdrawn before the subject enforcement notice was issued. I cannot see any material difference between the two enforcement notices, although I note that the exact boundaries of the blue land are clearer than the rather descriptive form of the requirement in the first enforcement notice.
8. Moreover, it is more conventional and accurate for notices of this type to first explicitly state that the unacceptable part of the mixed use of the land should cease and second that the various items that have been brought onto the land in association with that part of the mixed use should be removed. This notice omits the first part of that approach. Thus, even across the blue land the appellant would have an arguable case that once the numerous old/scrap cars, vans and non-agricultural vehicles that were in place when the notice was issued are removed, they could be replaced by different numerous old/scrap cars, vans and non-agricultural vehicles because there is nothing in the notice explicitly requiring the basic offending use of the land to cease.
9. There is an added complexity. An enforcement notice which seeks to underenforce brings with it the need to consider section 173(11) of the Town and Country Planning Act 1990 as amended. Where an enforcement notice in respect of any breach of planning control could have required any activity to cease, but does not do so and the requirements of the enforcement notice have been complied with, then, so far as the enforcement notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the carrying out of the activities.

10. Given the construction of the subject enforcement notice, once the appellant has removed the numerous old/scrap cars, vans and non-agricultural vehicles from the blue land, planning permission is treated as having been granted in respect of the "mixed use of agricultural and for siting of numerous old/scrap cars, vans and non-agricultural vehicles" across other parts of the red land, because the enforcement notice does not so require the cessation of that alleged mixed use from across other parts of the red land. This must be an unintended consequence for the Council, as the appellant would be able to go on and store the numerous old/scrap cars, vans and non-agricultural vehicles that are on the blue land on other parts of the red land in the AONB.
11. I have considered whether I could correct or vary the notice to address these defects 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 or variation will not cause injustice to the appellant or to the local planning authority.
12. The Council's email of 31 July 2017 begins by referring to its own email of 14 July and my site visit. From this I am not exactly clear if the Council has assessed the full extent of the letter dated 17 July from the Planning Inspectorate. That aside, the Council considers that "the area of compliance" could be changed without causing injustice so long as the existing use is preserved.
13. However, this response is rather vague. For instance, it is not made clear what "the area of compliance" should be changed to and I do not have before me an accurate agreed position on the extent of the existing use. There is no document such as a certificate of lawfulness or planning permission which formally covers that existing use.
14. In any event, aside from those practicalities, it is clear to me that enlarging the area of compliance, as should occur – whether that be by enforcing against the mixed use across the whole planning unit or by enforcing against it across the whole planning unit minus the existing use within it (even if that could be so specified in accurate and uncontroversial terms) – would be more onerous for the appellant than the potential outcomes of the enforcement notice as presently constructed. This is especially so because the enforcement notice would also need to specifically require the cessation of the basic land use for the siting of numerous old/scrap cars, vans and non-agricultural vehicles. The appellant would also lose the effect of section 173(11) of the 1990 Act as amended and would no longer be able to relocate the numerous old/scrap cars, vans and non-agricultural vehicles from the blue land to the red land, just as would be the case if the notice was drastically altered to relate to the blue land only throughout.

Conclusion

15. 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 steps required for compliance and the land where the breach is alleged to have taken place. It is not open to me to make corrections or variations to the notice in accordance with my powers under section 176(1) 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), (d) 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.

16. 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