



Appeal Decision

Site visit made on 12 March 2018

by **K R Saward Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 20 March 2018

Appeal Ref: APP/C1570/C/17/3180638

Land at Daisy Mays Farm, Hall Road, Elsenham CM22 6DN

- 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 Ian Mills against an enforcement notice issued by Uttlesford District Council.
 - The enforcement notice was issued on 26 June 2017.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of land for the siting of mobile home, caravan, yurt and shipping container on the land.
 - The requirements of the notice are to remove the mobile home, caravan, yurt and shipping containers marked with 'x' on the plan attached to the notice and any resultant debris from the site.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b),(c),(f)&(g) 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 enforcement notice

2. The appeal site comprises approximately 8.9 hectares. It consists of two fields divided by a lake which is under separate ownership. It is undisputed that the lawful use of the appeal site is for agriculture/forestry. At the time of my site visit part of the land was in use to keep poultry and various types of livestock.
3. Section 173(1) of the 1990 Act requires an enforcement notice to state the matters which appear to the local planning authority to constitute the breach of planning control. It is also a well-established and well known principle of the *Miller-Mead*¹ judgment that a notice must tell a recipient of it fairly what he has done wrong and what he must do to remedy it.
4. The act of development is a *material* change of use of land rather than a 'change of use' as alleged. This is easily corrected. The notice describes the change of use as the siting of a caravan, mobile home, yurt and shipping container. However, the siting of these structures does not amount to a use of land constituting 'development' for the purposes of section 55 of the 1990 Act.
5. As set out in *Wealden DC v SSE & Day*², the stationing of a caravan is not a material change of use in itself. It is necessary to identify the purpose for which

¹ *Miller-Mead v Minister of Housing and Local Government* [1963] 1 A11 ER 4592

² [1988] JPL 268

the caravan is sited. The same principle applies to the mobile home, container and yurt expressed to constitute a change of use of land. Thus, the Council has failed to identify the use or purpose of any of the structures listed.

6. The notice should contain sufficient detail to enable any person on whom a copy is served to know from the outset why it has been issued. It is only from the appeal statement that it becomes apparent that the Council is concerned with the residential use of the caravan and mobile home. The appellant confirms that they are in residential use by the farm manager. A case has been advanced under ground (c) that such residential use is lawful. Whilst the appellant has had opportunity to put that case, it is clear from the appellant's statement that he has not understood what use or purpose the Council is concerned about with regard to the yurt and shipping container. The notice does not say. In refuting the appellant's argument under ground (c) that they are ancillary to an agricultural use, the Council has not identified the use with which it is concerned. Whilst shipping containers can be regarded as operational development, the notice is directed at a use of land. Had the Council considered the container or yurt to be operational development then it would have alleged so and specified a 4 year immunity period.
7. When I visited, both the caravan and mobile home were in residential use within a fenced-off area. It is unclear if the Council considers there to be a mixed use of the land or separate planning units. Where there is a mixed use then the allegation should refer to all the components of the mixed use (including the agricultural use) even if not all uses are required to cease. If there is a separate residential planning unit, it has not been identified as such.
8. Furthermore, it is not enough to simply require removal of the structures. The notice should require the use which is considered to be in breach of planning control to cease to avoid planning permission being granted for the use under section 173(11) of the Act once there is compliance with the notice.
9. In addition, the allegation refers to a shipping container in the singular whereas the requirement is for removal of shipping containers in the plural. The appellant refers to two shipping containers, but only one is marked on the enforcement notice plan. I saw two containers positioned side by side. One contained chickens and hay was stacked inside the other.
10. The yurt contained a centrally positioned wood burner with plastic chairs in a circle. Some children's posters were attached to the fabric.
11. In determining an appeal there is provision to correct any defect, error or mis-description in the notice, but only where no injustice would arise to either party (section 176(1)). It is not for me to speculate over what use or purposes the Council intended to attack. There are too many errors for me to correct the notice without introducing matters on which the appellant has not had chance to comment. Injustice would arise if I were to do so.
12. My conclusion is not inconsistent with the Appeal Decision³ brought to my attention by the appellant where a notice was quashed for invalidity where the use of two static caravans was not specified nor the use required to cease.

³ Appeal ref: APP/A0665/C/14/2218600 dated 17 February 2015

Conclusion

13. 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 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 the various grounds as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

KR Seward

INSPECTOR