



Appeal Decision

Site visit made on 23 September 2019

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 28 November 2019

Appeal Ref: APP/V3310/C/18/3215856

**Land to the East of Orchard View, Chadmead, North Newton, Bridgwater
TA7 0DN**

- 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 Mrs Rachel Grant against an enforcement notice issued by Sedgemoor District Council.
- The enforcement notice was issued on 4 October 2018.
- The breach of planning control as alleged in the notice is Without planning permission, change of use of land from agriculture to equestrian keeping horses on the land as a leisure activity, erection of structures, e.g. jumps and stables, siting of a caravan and other paraphernalia, e.g. picnic table and children's slide, in the approximate position edged red and marked with crosses on the attached plan.
- The requirements of the notice are wholly *[sic]* remove the structures including jumps and stables, and remove the caravan, picnic table, children's slide and all other paraphernalia from the land and reinstate the land to its *[sic]* former condition.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal was brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Town and Country Planning Act 1990.

Summary Decision: The enforcement notice is quashed.

The Enforcement Notice

1. Under section 176(1) of the Town and Country Planning Act 1990 as amended (1990 Act), wide powers are available to me to correct any defect, error or misdescription in the enforcement notice, or to vary the terms of the enforcement notice. This is provided that the correction or variation would not cause any injustice to the appellant or the local planning authority.
2. It appears to me that the enforcement notice does not precisely describe the development alleged to be in breach of planning control. The Council is concerned that there has been a material change of use of land from agriculture to a recreational equestrian use that has been facilitated by the erection of stables, and the siting of a caravan, jumps, picnic table and children's play equipment.
3. The enforcement notice is therefore concerned with a material change of use – and not a material change of use and operational development. The Council's concern appears to be simply that the structures and chattels listed in the allegation enabled and are part of the alleged use.

4. The appellant has also made representations to the effect that some grazing still takes place on the land, suggesting that the allegation ought to be a material change of use from agriculture to a mixed use comprising agriculture and recreational equestrian use.
5. If there is a mixed use of land, the enforcement notice should always allege that, even if there would be no requirement for the lawful component of the mixed use to cease. The allegation forms the description of development subject to ground (a) and the deemed planning application. As such, if there is a mixed use, that could be relevant to the planning merits.
6. It is often possible to correct an enforcement notice so that it alleges a mixed use without causing injustice. However, I will not make a finding in this case as to whether there is a mixed use, and whether the enforcement notice could be corrected in that regard, because there is another, more serious defect.
7. As the appellant identified, the enforcement notice alleges a material change of use but does not require the use to cease. The Council is not correct in its view that the requirements to remove the structures would effectively mean that the land can only be used for grazing.
8. The appellant has referred to s173(11) of the 1990 Act which states that where: (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with - then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A of the 1990 Act in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
9. Since the notice alleged a material change of use, it 'could have required' the unauthorised use to cease – but it did not do so. If and when the requirements of the enforcement notice are complied with i.e. the structures are removed and the land restored to its former condition, planning permission would be treated as granted for the unauthorised use. The use could resume and the associated structures be brought back onto the land.
10. If I were to correct the enforcement notice so as to introduce a requirement that the alleged use is ceased, this would widen the scope of the enforcement notice and make it more onerous. While such corrections can sometimes be made without causing injustice, the appellant's submissions suggest that would not be the case here.
11. It would therefore be appropriate to quash the enforcement notice and doing so would give the Council the opportunity to properly investigate whether there is a mixed use of the land and, either way, to decide whether to exercise its powers under s171B(4) of the 1990 Act to take further enforcement action.

Conclusion

12. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity 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.

13. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the grounds set out in section 174(2)(a) and (g) 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.

Formal Decision

14. The Enforcement Notice is quashed.

V Bond

INSPECTOR