
Appeal Decision

Site visit made on 11 November 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2019

Appeal Ref: APP/W4325/C/19/3224352

**Land at Larton Livery, Frankby Stiles, Frankby Road, Frankby, Wirral
CH48 1PL**

- 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 Bill Titley against an enforcement notice issued by Wirral Metropolitan Borough Council.
 - The enforcement notice was issued on 8 February 2019.
 - The breach of planning control as alleged in the notice is unauthorised development in the green belt comprising:
 - 1) Engineering operations in the area hatched in blue on the attached plan comprising the formation of a large area of hard standing and the construction of a pet exercise area.
 - 2) The unauthorised use of the land hatched in blue on the attached plan as a pet exercise area, as a car ark, and for the storage and sale of goods in connection with the adjacent retail buildings.
 - The requirements of the notice are to:
 - 1) Permanently remove all hardstandings (including the pet exercise area) from the area hatched blue on the attached plan and permanently remove all resulting waste material from the land and reinstate the land to its former condition (pasture); and
 - 2) Permanently cease the unauthorised use of land hatched blue on the attached plan as a pet exercise area, as car park. And *[sic]* for the storage and sale of goods in connection with the adjacent retail building.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)[a], [f] and [g] of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Matters concerning the notice

1. Section 171A (1) (a) to the Town and Country Planning Act 1990 as amended ('the Act') says that the carrying out of development without the required planning permission constitutes a breach of planning control. Section 173 (1) says that a notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of s171A (1) within which, in the opinion of the authority, the breach falls. Section 173 (2) says that a notice complies with subsection (1) (a) if it enables any person on whom a copy of it is served to know what those matters are.
2. Section 173 (3) states that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.

Section 174 (4) states that those purposes are – a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or b) remedying any injury to amenity which has been caused by the breach.

3. The breach identifies the formation of an area of hardstanding, the construction of a pet exercise area and the use of the land as a pet exercise area, car park, and for the storage and sale of goods in connection with the adjacent retail buildings. The steps required, however, are ambiguous. Step (1) requires the removal of all hardstanding (including the pet exercise area) but does not require the removal of fencing or other paraphernalia associated with “the construction of a pet exercise area” and its use as such, nor does it require the removal of other paraphernalia connected with the adjacent retail building.
4. It is evident from the officer report and from the Council’s Statement that, in relation to the pet exercise area, it is the fencing enclosing the area which forms part of the operational development which has been carried. The Council identifies within its Statement that the minimum steps to overcome the harm is the permanent removal of the operational development. There is an inconsistency between the requirement to reinstate the land to its former condition (pasture) but not to remove the fence that has caused the loss of openness.
5. Were I to amend the notice to require the removal of the fence and other paraphernalia, this would enlarge the scope of the requirements which would cause injustice to the appellant. On the other hand, if I upheld the notice as drafted, compliance with it could result in planning permission being granted under s173(11) of the Act for the fencing, which is part of the alleged operational development involved in the construction of the pet exercise area.
6. I do not consider that the imprecision is such as would necessarily render the Notice a nullity. This is because the matters that appear to the Council as constituting a breach of planning controls are generally stated. Nevertheless, I conclude that the notice is invalid beyond correction, and should be quashed due to uncertainty.

Conclusion

7. For the reasons give above, I consider the enforcement notice is invalid. In these circumstances, the appeal under the various grounds (a), (f) and (g) as set out in s.174(2) of the 1990 Act as amended do not fall to be considered.

M Savage

INSPECTOR