



Appeal Decision

Site visit made on 19 November 2019

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/W1715/C/18/3216861

Land to the rear of Seddul Bahr (The Meadow), Allington Lane, West End SO30 3HP

- 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 Ashkin Mittal of Solent Real Estate against an enforcement notice issued by Eastleigh Borough Council.
 - The enforcement notice was issued on 19 October 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of the agricultural use of the land by erecting a building, shown hatched in blue on the attached plan, for storage and distribution.
 - The requirements of the notice are: Cease the use of the building, shown hatched in blue on the attached plan, for storage and distribution. Demolish the unauthorised building, remove all materials and items in connection with the unauthorised use and return the land to pasture.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Application for Costs

2. An application for costs was made by Mr Ashkin Mittal of Solent Real Estate against Eastleigh Borough Council. This application is the subject of a separate Decision.

Reasons

The appeal on ground (b)

3. The evidence indicates a building has been erected that does not reflect a planning permission which has been granted, and, that the building has been used for storage and distribution. However, the breach of planning control alleged in the notice is inaccurate.
4. The notice does not allege the erection of a building, or, a material change in the use of the land and the construction of a building to **facilitate** that change of use. Instead, the enforcement notice alleges that a change of use has occurred **by** erecting a building (my emphasis). It is not possible to change the

use of land by erecting a building and so the breach of planning control alleged in the notice cannot have occurred.

Conclusion

5. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly I quash the enforcement notice. In these circumstances the appeal on ground (d) set out in section 174(2) to the 1990 Act as amended does not need to be considered.

L Perkins

INSPECTOR