



Appeal Decision

Site visit made on 12 December 2020

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2020

Appeal Ref: APP/V3310/C/19/3233761

Land to the north east of Nethermoor Drove, Middlezoy, Bridgewater, Somerset TA7

- 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 Clifford Woodvine against an enforcement notice issued by Sedgemoor District Council.
 - The enforcement notice was issued on 20 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission, siting of caravan, in the approximate position edged red and marked with a cross on the attached plan.
 - The requirements of the notice are wholly remove the mobile home from the land edged red and restore the land to its former condition before the mobile home was sited.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. Section 173(1) of the 1990 Act as amended (the Act) requires an enforcement notice to state the matters which appear to the Council to constitute the breach of planning control. The *Miller-Mead*¹ judgement says that a notice must tell a recipient of it fairly what he has done wrong and what must be done to remedy the breach.
3. The notice alleges the siting of a caravan but does not amount to a use of land constituting 'development'. The stationing of a caravan may be ancillary to agricultural or other uses of the land. The starting point is to identify the planning unit and its use. It is established case law that a use of land must be alleged, and not simply the 'siting' of a caravan. In *Deakin v FSS*², it was held that the correct approach is to establish the lawful use of the planning unit, establish the effect of the caravan and its use on the character of the lawful use, and conclude whether there was a material change of use. It is not enough to simply examine the physical characteristics of the caravan and its use. Although the Council has identified the planning unit as having a recreational use for the keeping of horses, it has not provided a description of what it considers to be the use of the land within the allegation.

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

² *Deakin v FSS* [2006] EWHC 3402 (Admin), [2007] JPL 1073119

4. The Council suggests, within its statement, that a material change of use of the land has occurred, facilitated by the introduction of the caravan which is being used as a tack room. It suggests that this has introduced a 'wider use of the site from agriculture to the keeping of horses for a leisure activity'. However, the requirements of the notice do not relate to the use of the land. It is unclear if the Council's intention was to under-enforce the breach of planning control, using the provisions set out under S173(11) of the 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 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.
5. Wide powers to correct a notice are available to me under section 176(1) of the Act. However, they only apply if I am satisfied that the correction will not cause injustice to the appellant or the Council.
6. In this instance, were I to amend the allegation to include the change of use of the land for agricultural use to the keeping of horses for recreational use, I would also need to enlarge the scope of the requirements by including the requirement to *cease the use of the land for the keeping of horses*. Both actions would cause injustice to the parties because they have not had the chance to present their cases on that basis. Furthermore, the amendments to the notice might give rise to other grounds of appeal. Alternatively, if the notice is corrected as suggested and the requirements remain unaltered, this would result in under-enforcement and it is unclear to me if this outcome was intended.
7. In addition to the wording of the notice, there are also inconsistencies with the plan which indicates the siting of the caravan to be 'in the approximate position edged red and marked with a cross'. The whole site is outlined in red and there is no cross on the plan. However, there is a site indicator pin, although this does not pinpoint where the caravan was located at the time of my site visit.
8. I do not consider that the combined imprecisions would necessarily render the notice a nullity. This is because the matters that appear to the Council as constituting a breach of planning control are generally stated. Nevertheless, I conclude that because the alleged breach does not describe with sufficient clarity the breach of planning control, the notice is fundamentally flawed and beyond correction. Consequently, the notice is invalid and should be quashed.

Conclusion

9. For the reasons given above, I conclude that essential corrections to the enforcement notice cannot be made without causing injustice to the parties. Accordingly, the notice will be quashed and the appeal against it on ground (c) does not fall to be considered.

10. Should the Council wish to continue to pursue enforcement action, it may consider doing so by means of a replacement notice framed in the proper terms, having regard to the 'second bite' provisions of section 171B(4)(b) of the Act.

S Hanson

INSPECTOR