



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: 23 January 2020

Appeal Ref: APP/D0121/C/19/3231438

Worships Farm, Row Of Ashes Lane, Redhill, Bristol BS40 5TU

- 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 Andy Lane against an enforcement notice issued by North Somerset Council.
 - The enforcement notice, numbered 2017/0176, was issued on 4 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of land to holiday use.
 - The requirements of the notice are to cease the use of land for holiday use; return the building back to its original form; remove the conservatory, decking, rear boundary fence, grass and hardstanding, front boundary wall and vehicular access; and remove all resulting materials from the land including all items and miscellaneous paraphernalia relating to the holiday use.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The enforcement notice is quashed.

Matters concerning the enforcement notice

2. Planning permission was granted on 25 February 2014¹ *for the 'change of use of agricultural storage barn to north of site to holiday accommodation with installation of a mezzanine [sic] floor level, windows and doors and parking for three cars'*. Ten conditions were attached to the permission.
3. At my site visit I saw that the development appeared complete. However, the development has clearly not been implemented in accordance with the approved plans. Because the departure from the approved plans is so significant, due to the change to the shape of the roof and the addition of the conservatory, the conversion of the barn for holiday accommodation is deemed, by the Council, to be unauthorised. From the evidence before me, I have no reason to disagree.
4. An enforcement notice was issued previously in relation to the same site alleging a breach of planning control consisting of the carrying out of operational development without planning permission. The notice alleged *'without planning permission (1) the creation of a new access (labelled A on the*

¹ Planning application reference 14/P/0012/F (the 2014 permission)

attached plan), (2) Without planning permission the conversion of the barn to holiday accommodation not in accordance with planning approval 14/P/0012/F (drawing numbers B1593, B1592 and 8654/B attached to this notice)'.

5. Under s173(4) of the 1990 Act (the Act), where development has taken place that is not in accordance with a planning permission, the notice may require compliance with the *terms* (including any conditions and limitations) of the permission. The steps required to comply with the notice included works to the barn roof to ensure compliance with the approved drawings, removal of the conservatory and works to the access. The notice was quashed by the Inspector who concluded that the enforcement notice did not specify with sufficient clarity the steps required for compliance and that correcting the error in accordance with powers under s176(1)(a) of the Act would cause injustice. It was concluded that the enforcement notice was invalid and was consequently quashed.
6. The notice re-issued by the council under the 'second bite' provisions of s171B(4)(b) of the Act switched from an allegation of unauthorised development to that of a material change of use of 'land' for holiday use. Section 173(1) of the 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 well-established and well known principle of the *Miller-Mead*² judgement that a notice must tell a recipient fairly what they have done wrong and what they must do to remedy the breach.
7. There is uncertainty with the notice because the allegation is imprecise in that the change of use is directed at the land rather than the building. It also remains unclear as to whether the use of the building is unacceptable or the failure to comply with the terms of the 2014 planning permission. It seems to me that the Council consider the use of the building for holiday use is unacceptable purely because of the physical changes to the building that have taken place which are not in accordance with plans approved under the 2014 permission. This is evidence by the previous enforcement notice which attacked the unauthorised development with a requirement for compliance with, amongst other things, the approved plans, rather than a material change of use.
8. In determining an appeal there is provision under s176(1) of the Act to correct any defect, error or mis-description in the notice, but only where no injustice would arise to either party. If the notice was corrected to reflect the breach of planning as it appears to me, the corrections would be radical, for example, changing the allegation to the use of the building or altering the allegation to the failure to comply with the terms of the 2014 permission.
9. Consequently, the notice cannot be corrected without causing injustice because I cannot be certain that the appellant would not have chosen to appeal under different or additional grounds. Furthermore, if the allegation is corrected, I would need to vary the requirements of the notice thereby widening its scope. The varied notice would be too onerous in comparison to the one issued by the Council.
10. Accordingly, I find that the notice is invalid and incapable of correction.

² *Miller-Mead v Minister of Housing and Local Government* [1963] 1 All ER 4592

Conclusion

11. 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 grounds (a) and (c) do not fall to be considered.

S Hanson

INSPECTOR