



Appeal Decisions

Site visit made on 23 October 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 24 January 2020

Appeal Ref: APP/T2405/C/19/3220203,

Land and building off Coventry Road, Narborough, Leicestershire

- The appeals are 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 Christopher Mee against an enforcement notice issued by Blaby District Council.
- The enforcement notice was issued on 13 December 2018.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised erection and use of one industrial unit.
- The requirements of the notice are: -
 - a) Cease the use of the land other than for and in accordance with Class B1 and B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended) or any subsequent re-enactment and the land shall not be used for any other purpose whatsoever.
 - b) Cease the use of the land except between the following days and hours: Monday to Friday – 7:00am to 7:00 pm (excluding public holidays) Saturday – 8:00 am to 1:00pm (excluding public holidays)
 - c) Cease the use of the land on public holidays at all times.
- The period for compliance with the requirements is 30 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. (the 1990 Act)

Summary Decision: The enforcement notice is quashed.

Application for costs

1. An application for costs was made by Mr Christopher Mee against Blaby District Council. This application is the subject of a separate decision.

The Notice

2. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
3. The appellant has stated that he does not consider that it is clear if the alleged breach relates to operational development or operational development and a material change of use given the wording of paragraph 3 of the enforcement notice. In its response to my request the Council confirmed that the alleged breach relates to both the operational development and the material change of use. In addition, it also stated that to achieve clarity that an amendment is made to state that the breaches have occurred within the last ten years, rather than four years.

4. There is no dispute that a unit that is being used for an industrial purpose has been erected on the appeal site. I note that the Council has stated that the purpose of the notice is to remedy any injury to amenity which has been caused by the breach as stated at Section 173 (4) (b) of the 1990 Act and that the requirements of the enforcement notice do not require the building to be demolished.
5. Nevertheless, it is not clear from the wording of the alleged breach or the reasons for issuing the enforcement notice as to whether the Council are alleging that a material change of use of the building or the land or both has occurred. However, the wording of the alleged breach '*the unauthorised erection and use of one industrial unit*' would lead a reader of that enforcement notice to reasonably consider that any alleged material change of use related to the use of the unit rather than the land itself. I have considered whether I could correct the wording of the alleged breach to remove the words '*and use*' so that the allegation simply relates to the erection of one industrial unit. However, this would appear to directly conflict with what the Council intended and make the notice less onerous. Furthermore, the requirements of the notice all relate to the use of the land rather than the unit. Accordingly, uncertainty would remain and injustice may be caused to the Council. Therefore, the notice cannot be corrected in this way.
6. Alternatively, corrections could also be made to alter the reasons for issuing the notice to state that the breach has occurred in the last 10 years rather than 4 years as stated within the reasons for issuing the enforcement notice and to clearly refer to the change of use of the land. These corrections would reduce the ambiguity as to whether a material change of use was being alleged and whether the material change of use related to the use of the unit or the land.
7. Whilst, the appellant has expressly stated that he does not wish to make appeals on ground (c), that there has not been a breach of planning control, this relates to the operational development. It is clear that the appellant consider that the lawful use of the overall site is 'industrial use' based on the description included within the 1989 permission and that there are no conditions restricting the use of the site. The Council have also stated that the wider site has planning permission for an 'industrial use'. If it had been unambiguous that the alleged breach related to a material change of use of the land as well as operational development it is reasonable to consider that the appellant would have made an appeal on ground (c). Accordingly, correction of the notice in this way would prejudice the appellant.
8. Taking into account all of the above, I consider the notice to be uncertain and defective, but that it cannot be corrected without causing injustice to the parties. I therefore have no option but to quash the notice.

Formal Decision

9. The enforcement notice is quashed.

D. Boffin

INSPECTOR