



Appeal Decision

Site visit made on 6 January 2020

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 4 February 2020

Appeal Ref: APP/G1630/C/19/3232550

Part parcel plot 10 Warren Fruit Farm, Evesham Road, Greet, GL54 5BN

- 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 Conrad Nikta against an enforcement notice issued by Tewkesbury Borough Council.
- The enforcement notice was issued on 22 May 2019.
- The breach of planning control as alleged in the notice is Without Planning Permission, a material change of use of agricultural land to a residential use comprising operations to construct a timber building and works to it to facilitate a residential use, including;
 - Connection to a metered utility supply for mains electricity and water.
 - Installation of a septic tank
 - Installation of rainwater goods and water butts to the building
 - Laying a scalping's loose hardcore surface and a block slab paved pathway, the siting of a timber 'garden style' shed and a miscellany of other residential paraphernalia.
- The requirements of the notice are: Within the area outlined in RED on the attached plan:
 - Cease the unauthorised residential use of the land.
 - Cease the residential use of the timber building (now identified as The Wooden Bungalow) and;
 - a. Remove all utility service installations, rainwater goods and water butts attached to the building.
 - b. Demolish the unauthorised building and remove the block pillars on which it is supported.
 - c. Remove the septic tank installation.
 - d. Remove the garden shed and all residential paraphernalia associated with the residential use of the land.
 - e. Lift up and remove the scalping's hardstanding and paving slab pathway.
 - f. Remove from the land all items and materials resulting from compliance with steps a to e and;
 - Restore the land to its condition before the breach took place by levelling the ground and reseedling it with grass.
- 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 (g) 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 s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The enforcement notice is quashed.

The Notice

1. An enforcement notice must by virtue of section 173(1)(a) of the Town and Country Planning Act 1990 as amended (1990 Act) state the matters which appear to the local planning authority to constitute the breach of planning control. Pursuant to section 173(3) of the 1990 Act, it should also state the steps which are required to be taken, or the activities required to cease.
2. Whilst not hopelessly ambiguous, the enforcement notice in this case does not clearly describe the development alleged to be in breach of planning control. This is due to apparent inconsistencies within the allegation, reasons and requirements in the notice.
3. The allegation refers to a material change of use (MCU) of land from agricultural to residential use '*comprising* [my emphasis] operations to construct a timber building and works to it to facilitate a residential use...'. The reasons for issuing the notice refer to the material change of use having occurred within the last 10 years and the 'construction' of the 'timber building for a residential purpose' having occurred within the last 4 years. The requirements of the notice then go on to require essentially: ceasing the residential use of the land; ceasing the residential use of the 'timber building'; and demolishing the 'unauthorised building'.
4. The position as to what is alleged by the notice is further confused by wording within the Council's statement, which refers to the appeal as being concerned with a 'material change of use of Land, including the change of use of a former mobile agricultural building on which it is sited, to an unauthorised residential use unassociated with agriculture'.
5. The appellant seems also to query in their final comments as to the nature of the allegation and submits effectively that, if the allegation does not include operational development, then he should be permitted to keep the 'building' on the land provided that it is used for strictly agricultural purposes.
6. Thus, there is some doubt as to whether what is alleged is: (a) a MCU of land from agricultural to residential use with facilitating works, *and* operational development comprising the construction of a timber building for residential purposes; (b) a MCU of land from agricultural to residential use, together with a MCU of the timber building from agricultural to residential use, with facilitating works; or (c) a MCU of land from agricultural to residential use, together with facilitating works (which do not of themselves constitute operational development).
7. Under section 176(1) of the 1990 Act, wide powers are available to me to correct any defect, error or misdescription in the enforcement notice, or to vary the terms of the enforcement notice. This is provided that the correction or variation would not cause any injustice to the appellant or the local planning authority.
8. I could therefore theoretically correct the allegation in the notice and make any consequential variations to the requirements. However, to do so would involve making extensive amendments to the notice, potentially also meaning that the revised allegation/requirements would be inconsistent with the reasons given in the notice. So, there is a risk that in making such significant amendments, prejudice would result to either the Council or the appellant as they would not

have a suitable opportunity to consider the implications of those amendments, and make appropriate representations.

9. I will therefore quash the enforcement notice. This will give the Council the opportunity to consider the position and to decide whether to exercise its powers under section 171B(4) of the 1990 Act to take further enforcement action.

Conclusion

10. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the nature of what is alleged. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so.
11. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the grounds set out in section 174(2)(a) and (g) of the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Formal Decision

12. The Enforcement Notice is quashed.

V Bond

INSPECTOR