



Appeal Decision

Site visit made on 8 January 2020

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2020

Appeal Ref: APP/D0840/C/19/3227148

**Garden Field, Boat Cove Lane, Perranuthnoe, Penzance, Cornwall
TR20 9NW**

- 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 Miss Kathleen Hawkins against an enforcement notice issued by Cornwall Council.
 - The enforcement notice, numbered EN17/00666, was issued on 26 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of land for the stationing of a caravan and associated residential paraphernalia.
 - The requirements of the notice are: (1) Cease the use of the land outlined in red on the attached plan for the stationing of caravans. (2) Remove from the land outlined in red on the attached plan the caravan and all associated services. (3) Remove from the land outlined in red all residential paraphernalia. (4) Remove all materials and debris from the land resulting from compliance with requirements 1-3 above.
 - The period for compliance with the requirements is 2 calendar months.
 - 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 stationing of a caravan and associated residential paraphernalia. The stationing of a caravan does not amount to a use of land constituting 'development'. The notice should describe the purpose to which the caravan, and thus the land upon which it is stationed, is being put. The stationing of a caravan may be ancillary to agricultural or other uses of the land. The 'stationing of residential paraphernalia' is not a use of land.
4. It is established case law that a use of land must be alleged, and not simply the 'stationing' 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

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

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 leisure use rather than an agricultural use, it has not provided a description of what it considers to be the use of the land within the allegation.

5. The reasons for issuing the Notice offer no indication as to what use the Council consider the land is being put. The reference to residential paraphernalia might suggest that the primary use of the land, and caravan, is residential. However, the Council's appeal statement addresses a leisure / recreational use. The requirements of the notice do not require any use of the land to cease. 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. If that were the case, as the stationing of the caravan is not of itself development, then the Notice could not require its removal without the cessation of the use of the land.
6. S173(11) 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.
7. There is no doubt that the Notice as drafted is uncertain. 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. The Council was provided with the opportunity to correct the notice and for the appellant to comment on any amendments made to the allegation and requirements.
8. The Council agreed to the suggested correction to the allegation to include 'the use of the land for mixed allotment and leisure uses and for the stationing of a caravan in connection with that use'. However, no reference was made to the need to amend the requirements to reflect the corrected allegation.
9. Nevertheless, if I were to amend the allegation to include the change of use of the land for recreational/leisure uses, I would also need to enlarge the scope of the requirements by including the requirement to '*cease the use of the land for allotment/leisure uses*'. Both actions would cause injustice to the parties because neither have 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 was suggested, but the requirements remain unaltered, this would result in under-enforcement and it is unclear to me if this outcome was intended.
10. The alleged breach does not describe with sufficient clarity the breach of planning control and there remains elements of uncertainty. The notice is

fundamentally flawed and beyond correction without injustice to both parties. Consequently, the notice is invalid and should be quashed.

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 ground (c) does not fall to be considered.
12. 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