



Appeal Decision

Site visit made on 26 May 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 22 June 2020

Appeal Ref: APP/Z3635/C/19/3225626

Land east of Moor Lane, Staines upon Thames, Surrey

- 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 Adam Abu Warda against an enforcement notice issued by Spelthorne Borough Council.
 - The enforcement notice was issued on 1 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the land from open Green Belt land to a mixed use comprising the following unauthorised uses: (1) storage of motor vehicles and vehicle parts; (2) the stationing of a caravan; (3) storage of plant machinery; (4) other storage purposes including but not limited to the storage of other paraphernalia and general rubbish.
 - The requirements of the notice are:
 1. Cease the use of the land for a mixed use comprising (1) storage of motor vehicles and vehicle parts; (2) the stationing of a caravan; (3) storage of plant machinery; (4) other storage purposes including but not limited to the storage of other paraphernalia and general rubbish.
 2. Permanently remove from the land the motor vehicles and vehicle parts, the caravan, the plant machinery, other paraphernalia and rubbish, and other items that facilitate the unauthorised mixed use of the land.
 3. Permanently remove from the land all materials and debris arising from compliance with requirement 2 and restore the land to its previous condition.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (d) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. The enforcement notice is quashed.

The enforcement notice

2. The notice allegation refers to a material change of use of the land from open Green Belt land to a mixed use (involving the stationing of a caravan and the storage of various items). However, "open Green Belt land" is not a description of land use.
3. While failure of a notice to recite the 'base use' correctly would not in isolation cause it to be invalid, in this case there is also an alleged mixed use including the "stationing of a caravan" as one of the component primary uses. It is long settled law that the stationing of a caravan is not in itself a use: it is necessary to identify the purpose for which the caravan is stationed as omission does not convey the nature of the unauthorised development alleged. There would be no development as a result of a stationed caravan were the use ancillary to a lawful primary use.

4. Section 173(1) of the Act requires a notice to state the matters which appear to the Council to constitute the breach of planning control. Established case law 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. The notice in this appeal alleges a material change of use of the land without either identifying the lawful use of the planning unit (the 'before') or being sufficiently clear as to the mixed use upon which the Council is taking enforcement action (the 'after'). The overall result is that the recipient cannot reasonably know from the notice what material change of use is being alleged.
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. I am not assisted in the exercise of those powers that it is not clear from the Council's appeal submissions what it considers the purpose of the stationed caravan to be. Further, the appellant's own submissions say that the caravan is used incidentally in connection with what he says is the agricultural use of the land. To correct the notice with the appellant's description of the caravan's purpose would clearly be prejudicial to the Council as it might undermine the basis of the enforcement action. I am therefore left with no option but to quash the enforcement notice on the basis that it is beyond correction.
7. 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.

Conclusion

8. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. 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. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (c) and (d) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Andrew Walker

INSPECTOR