
Appeal Decision

Site visit made on 4 August 2020

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2020

Appeal Ref: APP/P2935/C/19/3232395

Land adjoining 33 Station Road, Stannington, NE61 6DX

- 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 Jason Miller of Ecobond Properties Limited against an enforcement notice issued by Northumberland County Council.
 - The enforcement notice was issued on 30 May 2019.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised Change of use of land from Agricultural to use as a reclamation yard and retail of reclaimed goods and siting of and repair and sale of storage containers.
 - The requirements of the notice are:
 - (i) Cease the unauthorised use of the land;
 - (ii) Remove all storage containers;
 - (iii) Remove all reclaimed goods; and
 - (iv) Restore the Land to agricultural land.
 - The period for compliance with the requirements is eight weeks.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The enforcement notice is quashed

Reasons

1. The appeal relates to an area of land on the north side of Station Road, Stannington, to the west of the East Coast railway line. The land has a limited frontage to Station Road itself. The majority of the land sits to the rear of a line of built development that fronts onto Station Road, including the residential property of No 33 Station Road.
2. The plan attached to the notice shows the land to which the notice relates as a single entity edged in red. The Council explains in its evidence that the extent of the land to which the notice relates is derived from examination of aerial satellite images and from Land Registry title plans. The Council explains that these do not indicate any delineation or segregation of the land subject to the notice, and this appears to be the reason why the Council shows the land as a single entity.
3. The Council's interpretation of aerial satellite images and Land Registry title plans is not, however, supported by the situation on the ground. There is a fence across the full width of the site, running broadly parallel with Station Road. Although there is a deliberate gap in this fence, it effectively divides the site into two halves: for convenience, I shall refer to these as the northern part and the southern part. The northern part is then further sub-divided by a fence running in a broadly north-south direction.

4. Notwithstanding the above, I am entirely satisfied that the combination of the address stated on the notice and the plan attached to it is sufficient to clearly identify the land to which the notice relates. However, the corollary of the Council's approach is that it appears to have treated the land to which the notice relates as a single unit of occupation with no physical or functional separation of uses within it. Although not overtly stated in its evidence, as I understand it the Council has therefore treated the land to which the notice relates as a single planning unit.
5. The breach of planning control as alleged in the notice is, without planning permission, the unauthorised *change of use* of land from agricultural to use as a reclamation yard and retail of reclaimed goods and siting of and repair and sale of storage containers (my emphasis). Herein lies the first defect with the notice.
6. The meaning of development for the purposes of the Town and Country Planning Act 1990 (the 1990 Act) is defined at Section 55(1) of that Act as including the making of any *material* change in the use of any building or other land (my emphasis). It follows that the allegation in the notice of a change of use, without alleging that it constituted the making of a material change of use, would not constitute development for purposes of Section 55(1) of the 1990 Act.
7. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Because the breach of planning control as alleged in the notice does not constitute the development of land, it follows that planning permission would not be required for it. The notice is defective in that respect.
8. In other circumstances, I might have corrected the notice to allege a material change in the use of the land. It is evident that the appellant understood that the allegation was intended to refer to a material change of use, and I would therefore have been satisfied that no injustice would have been caused by so doing. However, that is not the only, or indeed the most serious, defect in the notice.
9. The notice alleges the (material) change of use to a reclamation yard and retail of reclaimed goods and siting of and repair and sale of storage containers (my emphasis). It is not clear on the face of the notice whether the Council is alleging a mixed use that includes all of those elements or whether each use separated by an 'and' is intended to be a separate use. The breach of planning control alleged is, in that respect, mis-described.
10. If the Council's intention was to allege a mixed use, the notice should have alleged a mixed use with all of the components of the mixed use set out, even if it is considered expedient that not all of those uses should cease. If, on the other hand, the notice was intended to specify a number of separate uses, the notice should make that clear. But it does not.
11. In my view, this defect is not so serious as to make the notice a nullity: it is not, for example, hopelessly ambiguous; it is just not worded with sufficient clarity and precision. The notice does, however, contain a significant misdescription in the breach of planning control alleged and for that reason is invalid as it stands. In that context, the powers transferred to Inspectors under s176(1)(a) of the 1990 Act include to correct any defect, error or

misdescription in the enforcement notice or, under s176(1)(b) of that Act, to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation will not cause any injustice to the appellant or the local planning authority.

12. If the Council had intended to allege a mixed use, I cannot discount the possibility that the appellant may have approached his grounds of appeal differently. He may have, for example, chosen to appeal on other and/or different grounds.
13. In particular, the appellant advises that he deliberately elected not to appeal on ground (a), namely that planning permission ought to be granted for the matters stated in the notice. I cannot discount the possibility that the appellant may have elected to make an appeal on ground (a) if the notice had been clear in alleging a mixed use. The significance of that is, unlike the other grounds of appeal set out in section 174(2) of the 1990 Act, an appeal on ground (a) requires the payment of the appropriate fee before it can be considered. That fee must be paid within a specified period at the outset of the appeal process. There is no provision in the relevant Regulations¹ for that fee to be paid once that period has elapsed. It follows that if I were to conclude that the notice was intended to allege a mixed use and corrected the notice to reflect that, the appellant would not be able to amend his appeal to include ground(a). That would cause the appellant injustice.
14. On the other hand, if the notice had intended to allege a number of separate uses, that raises the spectre as to whether separate planning units have been created within a single unit of occupation. Although I make no conclusions in that regard, I did note from my site visit that at least two of the uses alleged (the use as a reclamation yard and the siting of storage containers) were taking place in different areas within the southern part of the site². That being the case, it would have been reasonable for the recipient of the notice to have concluded that the notice was alleging a number of separate uses within a single unit of occupation. This may in turn have led the recipient to conclude that the notice was, in effect, alleging the creation of separate planning units.
15. If the notice was intended to allege a number of separate uses and the creation of separate planning units, I cannot discount the possibility that the appellant may have approached his grounds of appeal differently. Again, I cannot discount the possibility that the appellant may then have elected to appeal on ground (a).
16. The situation is then compounded further by the reference in the allegation to the change of use from "Agricultural". The appellant submits that the use of this land is not agricultural, and points to a series of planning applications relating to the site in which the relevant ownership certificates made no reference to an agricultural holding. The applications were entertained by the Council on that basis which, the appellant contends, shows that the Council accepts that the land is not in agriculture use.
17. The Council responds to this point by explaining that by signing the declaration on the ownership certificate, the owner is merely confirming that the land is

¹ The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012.

² At the time of my site visit, no containers were being stored on the site but the hardstanding on which the containers would normally stand were pointed out to me.

not subject to an 'agricultural holding' as defined in the Agricultural Holdings Act 1986. In this case, because the land is not subject to a contract of tenancy, there was no agricultural tenants to notify of the application. But this does not, in the Council's view, mean that the land is not in use for agriculture.

18. As I observed during my site visit, the northern part of the site comprises open paddocks, albeit these were somewhat overgrown with rough grass and other vegetation. For present purposes, it is immaterial whether the use of those paddocks is for agriculture or perhaps some form of equestrian use, as suggested by the appellant. It is therefore not necessary for me to reach any firm conclusion on the precise use of this land.
19. The salient point is that the use of this land is different to that taking place on the southern part of the site. The use as a reclamation yard and retail of reclaimed goods and siting of and repair and sale of storage containers³ as alleged in the notice all take place in the southern part of the site. This is accepted by the appellant in his evidence and was confirmed by my observations during the site visit.
20. The area covered by the notice, as shown edged in red on the plan attached to the notice includes both the southern part of the site where the commercial uses are taking place and the northern part of the site. If, then, it was the Council's intention to allege a mixed use across the whole of the site as a single planning unit, the notice should have referred to the use(s) taking place in the northern part of the site as an element(s) of that mixed use. This again introduces the possibility that the appellant may have approached his appeal differently had the notice been clear on this point, including the possibility that the appellant may have pursued an appeal on ground (a) and the basis of any appeal on ground (b).
21. If, on the other, the Council was only intending to attack the commercial uses taking place in the southern part of the site, then the notice should have made that clear. But it does not.
22. Whichever the Council's intention was, either to allege a mixed use across the whole site or separate uses taking place in different parts of the site, the notice and the accompanying plan are not sufficiently clear. I have carefully considered whether I can correct the notice in this respect. The difficulty again is that correcting the notice and varying the attendant requirements to comply with it would both give rise to the possibility that the appellant may have approached his appeal differently. A significant element of that would have been the approach taken to determining the relevant planning unit(s), a fundamental starting point for considering whether to appeal on grounds (b), (c) and/or (d) as set out in section 174(2) of the 1990 Act. For these reasons, I cannot correct and/or vary the notice without causing injustice.
23. Finally, there is a minor error with the plan attached to the notice, insofar as a small slither of land included within the red edged area is subject to planning permission for a residential development (Council reference: 17/04475/OUT). The Council accepts this and confirms that it was not the Council's intention to include any land subject to that permission in the land to which the notice relates. The Council agrees to this area being excluded from the land to which the notice relates.

³ Purely in the interest of convenience, I shall refer to these uses collectively as the commercial uses.

24. Amending the plan attached to the notice to omit this small slither of land would not cause the appellant injustice and, in other circumstances, I would have been minded to correct the notice in this respect. However, the Council has not provided a corrected plan to substitute for the incorrect one. In the absence of that revised plan, the notice remains defective in this regard.

Conclusion

25. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the land where the breach of planning control is alleged to have taken place. It is not open to me to correct the errors 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.
26. In these circumstances, the appeals on the grounds (b), (d), (f) and (g) set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Formal Decision

27. The enforcement notice is quashed.

Paul Freer

INSPECTOR