



Appeal Decision

Site visit made on 17 August 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2020

Appeal Ref: APP/V1505/C/19/3236260

Land at Cornwall Road, Cross Road, Bowers Gifford, Basildon, Essex

- 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 Mrs Anita Norton against an enforcement notice issued by Basildon District Council.
 - The enforcement notice was issued on 30 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change in use of the Land to use for the stationing of caravans for residential use.
 - The requirements of the notice are:
 - i. Cease the use of the Land for the stationing of the caravan(s) for the purposes of human habitation.
 - ii. Remove all caravans from the Land.
 - iii. Remove all close-boarded fencing from the Land, including all fixtures fittings and any associated waste materials therefrom.
 - iv. Remove all hardsurfacing including the associated compacted earth, hardcore and gravel from the Land.
 - The period for compliance with the requirements is four (4) months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The enforcement notice is quashed.

Matters concerning the notice

2. During my visit I saw that the appeal site comprises part of a wider site which is bound by fencing, with gates providing pedestrian and vehicular access to Cornwall Road. A series of containers and what appeared to be building materials including wood, tyres and window frames were stored to the rear of the wider site, outside the area identified on the notice. The appellant advises within her statement that the site is currently used by a local handyman and local bricklayer for the storage of their tools, equipment and materials. This appears consistent with what I saw on the wider site.
3. The appellant states that her late husband, Mr Norton, used the appeal site as a base for his builder's yard and in 2017 he instructed contractors to reposition the builders yard containers, equipment and materials and lay, in the front portion of the appeal site, two areas of hardstanding for the siting of two caravans. In support of these assertions, the appellant has provided a statutory declaration and a series of photographs which show fencing, which it is asserted the current fencing replaced, and containers where the first caravan is now sited.

4. Although the storage of containers and building materials appeared to be outside of the red line boundary drawn on the enforcement notice plan, there is no delineation between the front part of the site, which contain the caravans, and the rear. It is therefore likely that the appeal site is also used in relation to the storage use, particularly since users of the rear of the site would be obliged to use the gates situated to the front of the site to access and egress the site. Therefore, on the evidence before me, as a matter of fact and degree, I conclude that the wider site comprises the planning unit and that the site is in mixed use for residential purposes and storage.
5. It is important that the allegation is right, since the terms of the deemed planning application derive from the allegation. The Notice describes the allegation as the material change in use of the Land to use for the stationing of caravans for residential use and does not therefore refer to all the activities being carried out on site at the time it was issued. S176(1) gives me the power to correct any defect, error or misdescription in the Notice or vary the terms of the Notice so long as I am satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
6. I have considered whether it would be possible to correct the allegation and requirements to refer to all elements of the mixed use. However, this would cause injustice since the appellant may wish to appeal under ground (d) in relation to the storage element. I have also considered whether it would be possible to correct the allegation only and not the requirements, however, this would result in deemed planning permission being granted under s173(11) for the storage use which would cause injustice to the Council.
7. I do not consider that the inaccuracy is such as would necessarily render the Notice a nullity. This is because the matters that appear to the Council as constituting a breach of planning controls are generally stated. Nevertheless, I conclude that the notice is incapable of correction without injustice to the appellant or local planning authority and should therefore be quashed.

Conclusion

8. For the reasons give above, I consider the enforcement notice is invalid. In these circumstances, the appeal under the various grounds (a), (f) and (g) as set out in s.174(2) of the 1990 Act as amended do not fall to be considered.

M Savage

INSPECTOR