
Appeal Decision

Site visit made on 23 September 2020

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref: APP/N1920/C/20/3246997

**Land at Bushey Hall Farm, Bushey Mill Lane, Bushey, Hertfordshire
WD23 2AB**

- 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 P Supple against an enforcement notice issued by Hertsmere Borough Council.
 - The enforcement notice, numbered 18/0297/UCU, was issued on 17 January 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the change of use of land to storage of materials and commercial uses.
 - The requirements of the notice are:
 - Remove the unauthorised skips, containers and materials stored on the land;
 - Remove all the unauthorised vehicles that are stored on the land;
 - Cease the unauthorised business operations from the site;
 - Reinstate the topsoil and vegetative cover of the land where these have been removed;
 - Remove all fittings and fixtures all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Procedural Matter

2. During my site visit I was not granted access to part of the appeal site because the appellant's dogs were said to be loose in that area. Although I was able to see most of the site, a small area to the rear of the farmhouse was not visible to me. In the circumstances of this case, however, this makes no difference to my decision on the appeal.

The Enforcement Notice

3. The land targeted by the notice contains the farmyard area and a range of buildings, together with the farmhouse and some grassed areas. A Certificate of Lawful Use or Development (LDC)¹ and a planning permission granted on appeal in 2008² establish the lawful use of a number of buildings and open areas within the site for various storage and commercial uses.

¹ Ref TP/08/0896

² APP/N1920/A/08/2063920

4. In accordance with s173 of the Act, a planning enforcement notice must state, 'the matters which appear to the local planning authority to constitute the breach of planning control' and it must be stated in such a way that it 'enables any person on whom a copy of it is served to know what those matters are'. In other words, the allegation must be clear.
5. In this case the allegation in the enforcement notice is the change of use of land to storage of materials and commercial uses. The term 'commercial uses' is very broad indeed and could cover many types of business use. That might be a satisfactory approach in some instances where the matter targeted by the notice is obvious. In this instance, however, the site already contains lawful commercial and storage uses. Since the notice plainly cannot target lawful commercial uses, it was necessary for it to specify with clarity which commercial uses it had in mind. By failing to do so, the notice is unacceptably ambiguous.
6. I appreciate that the notice specifically relates to 'the change of use of land' but I am not persuaded that this is sufficient to show clearly that the buildings in the site were excluded from the allegation. In any event, some open areas of the site can be lawfully used for caravan storage and also for vehicle circulation, parking, loading/unloading in connection with the lawful storage and commercial use of the buildings, as established by the planning permission and LDC referred to earlier.
7. In short, on such an extensive site, which contains a variety of lawful commercial and storage activities, it was necessary for the Council to define the breach of planning control more clearly, either with the words in the notice or by defining particular parts of the site. Overall, I do not consider that the nature of the alleged breach of planning control can be understood with sufficient clarity from the allegation in the notice.
8. Some additional information has been supplied with the appeal documentation and it appears that the notice is, in part, aimed at a haulage business which the Council believes is being run from the site. The Council also says that the notice is not aimed at any lawful activity on the site and is concerned only with outdoor activities. However, none of this is clear from the notice itself.
9. The lack of clarity in the allegation leads to uncertainty in the requirements set out at section 5 of the notice. Since the notice does not state which business operations are targeted, it is not clear which must cease. Moreover, the requirement to remove all the unauthorised vehicles that are stored on the land goes beyond the allegation of unauthorised storage on the land, which relates specifically to the storage of materials. It might be said that the storage of vehicles relates to the commercial uses element of the allegation, but that is dealt with separately in the requirement to 'cease the unauthorised business operations from the site'. At the very least, the difference between the unauthorised storage alleged and the requirement to remove vehicles creates uncertainty regarding what the Council was trying to achieve with the notice.
10. I have the power to correct any defect in the notice, provided it does not lead to injustice to the Council or the appellant. I have considered carefully whether it is possible to do so in this instance.
11. From the additional information provided with the appeal it is clear that the use of buildings within the site is not targeted by the notice, and the notice could

be altered to reflect this. This would reflect the views of the Council and would not make the notice more onerous, and so would not cause injustice to either party.

12. However, even with the additional information provided with the appeal, I have real difficulty understanding what the Council was trying to achieve with the notice. The LDC indicates that some external areas may be used in connection with the businesses in the buildings, but these areas are not defined in the notice. I cannot determine from the Council's case whether or not it was intended that the notice should apply to the use of any of these external areas. I have considered whether the wording of the notice could be more focused, perhaps referring specifically to the haulage business which appears to be the Council's key concern. However, given the vague nature of the allegation in the notice, I cannot tell whether this would address the whole of the alleged breach the Council sought to target. In these circumstances, I am not able to correct the notice without risk of causing injustice.
13. The Council refers to a recent appeal³ in which a notice was upheld and the inspector commented that it was not necessary for a notice plan to show every detail of the alleged unlawful use. However, while that may be true as a general point, the overriding requirement is for the notice to be clear. In this particular case, given the range of lawful storage and commercial uses within the site, further clarity was needed. While I do not consider the notice to be so hopelessly ambiguous as to render it a nullity, its defects are such that it must be quashed.
14. A range of matters relating to this appeal have been raised by local people. By and large, these matters relate to the planning merits of the alleged use of the site and would thus be properly considered in the context of a deemed planning application. However, as I explain below, my decision to quash the notice means that the appeal on ground (a) and the deemed planning application do not now fall to be considered with this appeal. My decision to quash the notice leaves open to the Council the option of issuing a further, corrected notice.

Conclusion

15. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance 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. In these circumstances the appeal under the various grounds as set out in section 174(2) 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.

Peter Willows

INSPECTOR

³ APP/N1920/C/19/3232056