



Appeal Decision

Site visit made on 13 October 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 25 November 2020

Appeal Ref: APP/M1710/C/20/3246451

Land adjacent to 114 White Dirt Lane, Horndean, Waterlooville PO8 0TW

- 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 Robert Saunders against an enforcement notice issued by East Hampshire District Council.
 - The enforcement notice was issued on 6 January 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last 10 years, material change of use to residential garden.
 - The requirement of the notice is to:
 1. To permanently cease the use of the Land for residential purposes.
 2. To permanently remove all residential items from the Land.
 3. To cease the use of the access to the land as outlined in the approximate position in "black" annotated on the attached plan.
 4. Erect a fence or plant hedging along the boundary marked A-B and C-D (as annotated on the plan) and at a height of no less than 1m and not exceeding 2m.
 - The period for compliance with the requirement is 2 months after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid on ground (a) within the specified period an application for planning permission is deemed to have been made under section 177(5) of the Act as amended, and falls to be considered.
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Procedural Matters

1. If an enforcement notice does not comply with the various statutory requirements set out in s173 of the 1990 Act, as amended then it will be a nullity and cannot be saved by the curative powers contained in s176(1). Leaving aside the wording of the notice's requirements for the moment, it appears that the document contains all the relevant entries so as not to disqualify it at the outset. However, the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 under Part 2, 4C specifies that notices shall also show the precise boundaries of the land to which it relates, whether by plan or otherwise. In this particular instance the plan attached to the enforcement notice issued, although titled 'Land adjacent to 114 White Dirt Lane', has no street name annotated, nor does it properly identify No 114, the only property referred to in the notice.
2. In fact, from my site visit observations, the only building's footprint shown in the immediate vicinity of the 'red ringed' land is that of 'Mountain Ash' (No 112), yet even that outline has no annotation. In the absence of any measurements, points of reference or, importantly, the relevant planning unit involved ie. the unit of land which the ringed piece of land is being used in

association with, the imprecision gives much scope for confusion. The land cannot be used as garden in isolation, instead it must relate to a particular dwelling. In this regard I refer to paragraph 6.3 of the Council's Statement of Case, whereby it is stated:

"The Annex to which the land lends itself to being connected to and now claimed as being used as garden for, is within the grounds of the garden of 114 White Dirt Lane and not that of the appeal site..."

3. The paragraph continues:

"The land to which this appeal relates is sole reason is to provide a garden for the Annex as now known as 112 White Dirt Lane (Mountain Ash)."

4. This wording, and the picture it conjures up, is wholly confusing. Moreover, in reading on further it appears that the Council is taking issue with 'The Annexe' being used as a dwelling in its own right. If that is the case then for the enforcement notice to instead attack a separate piece of land which the Council considers is being used as associated garden further muddies the waters.
5. I note the Council's Appendix K, a Land Registry Plan, is slightly more legible in the above regard, although, again, the relevant buildings' outlines are not numbered nor reference made to any identifiable planning unit. Moreover, this appended plan is in isolation, and only forms part of the Council's appeal Statement. It is not, crucially, an attachment to the enforcement notice itself.
6. Turning now to the notice's requirements, Requirement 1 specifies the cessation of the use of the land for "*residential purposes*". I am unclear what exactly is meant here. The term residential purposes would normally imply land or buildings being used for habitable means yet, as referred to, the alleged breach, instead makes mention of residential garden. Requirement 2 requests the removal of "*residential items from the land*". This is particularly vague, is open to wide interpretation, and could amount to significant confusion in attempts to comply.
7. Requirement 3 is concerned with the cessation of the use of the access to the land "*as outlined in the approximate position in 'black' annotated on the attached plan.*" Whilst, from my site visit, I understand what the Council is here referring to, the plan attached to the notice shows two black lines highlighted. Of particular concern, though, are those measures requested under Requirement 4, relating to the erection of a fence or the planting of hedging. The scope of an enforcement notice is limited by s173(4)(a) and (b) of the 1990 Act. Where planning permission has not been granted for the development, the power is simply to restore the land to its previous condition. There is no statutory power to require the appellant to undertake works which would result in an improvement to that previous condition.
8. None of the requirements in this instance can therefore be considered as sufficiently precise and unambiguous; something one would reasonably expect of a legal document, and certainly one representing a charge on the land. Mindful of the judgement of *Miller Mead v MHLG* [1963] 2 WLR 225 I consider that parallels can here be drawn in that the current notice's construction is so ambiguous and uncertain to the point that the owner or occupier could potentially not tell in what respect the land had been developed without

planning permission or further, that they might interpretate, with reasonable certainty, what steps had to be taken to remedy the alleged breach.

9. In weighing up this case I am concerned that the enforcement notice is so littered with errors, admittedly of varying importance, that when taken together, they compound to strongly suggest its invalidity. I, therefore, doubt whether, in the form issued, the notice provides the certainty necessary for it to have a reasonable chance of success. The absence of an adequately detailed plan attachment is a particular failing given the circumstances surrounding the alleged breach.
10. Under the provisions of section 176(1) of the 1990 Act as amended it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation will not cause any injustice. It is considered that the Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing. However, I cannot here be certain that no injustice would be caused if I were to attempt to make the significant corrections necessary. In other words I find that this notice, as issued, is incapable of correction.
11. For the reasons given above I must conclude that the stated requirements do not cogently relate to the alleged breach of planning control specified, and no planning unit is obvious. Further, Requirement 4 goes beyond the legal scope of any enforcement notice. In such circumstances it is not open to me to correct the errors in accordance with my powers under s176(1)(a) of the 1990 Act as amended since injustice would likely be caused were I to do so.
12. The enforcement notice is therefore invalid and will be quashed.

Timothy C King

INSPECTOR