



Appeal Decision

Site visit made on 22 February 2021.

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 08 March 2021

Appeal Ref: APP/V1505/C/19/3228293

Land at Sadlers Park, London Road, Bowers Gifford, Basildon SS13 2HD

- 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 by Gail Doran against an enforcement notice issued by Basildon District Council.
 - The enforcement notice ref. 19/00040/UCO, was issued on 16 April 2019.
 - The breach of planning control alleged in the notice is:
 - Failure to comply with conditions 1 and 2 of planning permission APP/V1505/C/02/1089677 granted at appeal on 12 October 2005 which state:
 - Condition 1 - *'Not more than four mobile homes and four touring caravans shall be stationed on the site at any one time'*; and,
 - Condition 2 - *'There shall be no more than three residential plots on the site and the eastern half of the site shall always be kept as grassland'*.
 - The development to which the permission relates is:

The change of use of the land for the deposit of hardcore, and the change of use for the siting of caravans and their use for residential purposes.
 - The conditions in question are nos. 1 and 2 as recorded above.
 - The requirements of the notice are to:
 - (i) Cease the use of the Land for the storage of caravans.
 - (ii) Remove any and all mobile/static and touring caravans from the Land apart from the four mobile homes and four touring caravans that have planning consent.
 - (iii) Restore the land to its former condition by levelling and re-cultivating with grass seed.
 - The periods for compliance with the requirements are:

Requirements (i) and (ii) – one month.
Requirement (iii) – one month.
 - The appeal is proceeding on the ground set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The enforcement notice is quashed.

Preliminary matters

2. The appeal site is the eastern part of a larger site for which planning permission was granted at appeal in October 2005. That appeal was itself a re-determination of an earlier appeal remitted to the Secretary of State by the High Court.

3. In their appeal statement the Council called into question the status of the appellant as a Gypsy or Traveller. However, they have since confirmed that this is not an argument that they pursue.
4. An appeal was originally brought on ground (a) – that planning permission should be granted for the matters stated in the notice. There was correspondence with the parties about whether the fee was payable for the planning application deemed to have been made under the provisions of s.177(5) of the Act. The appellant argued that the appeal should be exempt as a result of an earlier application¹ for variation of Conditions 1, 2 and 4 of the 2005 planning permission ref. APP/V1505/C/02/1089677 granted at appeal. That application was not determined. However, the application was for matters significantly different from those raised in the enforcement notice – notably in terms of the numbers of mobile homes and pitches. The appellant's then agent was notified on 13 September 2019 that the ground (a) appeal and deemed planning application had lapsed.

Background

5. The Sadlers Park site lies on the western edge of the large built-up area of South Benfleet. It is immediately to the west of the interchange on the A13 trunk road known as Sadlers Farm Roundabout, and lies between London Road to the north, and an A13 slip road to the south. Access to the site is from London Road.
6. The 2005 determination with its conditions granted a permanent personal permission for three sites for gypsy families accommodating a total of no more than four mobile homes and four touring caravans. Other conditions limited the degree of commercial activity, and required a soft landscaping scheme to be submitted, approved and carried out. In particular there was a requirement that the eastern part of the site should always be kept as grassland. It is that part of the larger site that is subject of this appeal.
7. I saw that the tarmac access road has entrance gates and decorative brick walls to either side and provides access to three quite extensive paved pitches. At the time of my visit there were 2 substantial mobile homes on the northern pitch, a mobile home and two touring caravans on the central pitch, and 2 smaller mobile homes and 2 touring caravans on the southern pitch.
8. The eastern part of the site subject of the enforcement notice has an access way through the brick wall along the eastern side of the principal access road. This part of the site is surfaced with compacted road planings, and there are earth bunds along external boundaries to the roads. At the time of my visit there were 14 single-unit mobile homes arranged in a regular fashion around the edges of the site as well as various cars and vans.

The enforcement notice

9. The appellant argues that the caravans on the eastern part of the site are not stored there but are used for residential purposes. The Council do not dispute this, or indeed make any comment in that regard. From what I saw it appeared that many, if not all the caravans were used residentially.

¹ Application ref. 15/00742/VAR,

10. It is long settled law that an enforcement notice should tell recipients what they have done wrong and what must be done to remedy that wrong. Although the appellant acknowledges there is residential use, she has not had a proper opportunity to appeal against that allegation, and the Council's case has been framed in terms of the alleged use for storage of caravans rather than their residential use. Furthermore, it is not entirely clear whether the actual use is for one or both of those purposes. If I were to correct the notice to refer to residential use I consider there would be significant injustice caused for both parties. In these circumstances I have concluded that the enforcement notice is not correctable and therefore invalid. I intend to quash the notice.

Conclusions

11. 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 (g) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Stephen Brown

INSPECTOR