



Appeal Decision

Site visit made on 29 January 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st March 2021

Appeal Ref: APP/U3935/C/20/3258967

1 South View Cottages, The Marsh, Swindon SN4 0AR

- 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 L Averies against an enforcement notice issued by Swindon Borough Council.
 - The enforcement notice was issued on 7 August 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the land from use as a dwelling house (C3) to mixed use as a dwelling house (C3) and use to accommodate a metal storage container on the Land as shown in the photographs attached as Appendix A¹.
 - The requirements of the notice are: Cease the use of the Land for the unauthorised development and remove from the Land the metal storage container and ensure that this item or any similar items are not placed on the Land, at any time.
 - The period for compliance with the requirements is one month from when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (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. I have identified a number of defects with the enforcement notice in question, which I set out below. These defects have caused me to consider the position with regard to the validity of the notice or, indeed, whether it is a nullity. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b) of the 1990 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.
2. The land to which the enforcement notice relates is a semi-detached residential dwelling and associated garden. The breach of planning control as alleged in the notice is 'without planning permission, the change of use of the land from use as a dwelling house (C3) to mixed use as a dwelling house (C3) and use to accommodate a metal storage container'. Section 55(1) of the 1990 Act defines the meaning of development 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.

¹ Reference in this heading to "Appendix A" is to a photograph attached to the enforcement notice.

3. 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.
4. Having regard to the appellant's case and his appeal under ground (c)², he has clearly understood that the allegation was intended to refer to the change of use being material. As such, I am satisfied that a correction of the notice to include reference to a **material** change of use would not have caused injustice.
5. In addition to the above, paragraph 4 of the enforcement notice states that the breach of planning control alleged has occurred within the last four years. Section 171B of the 1990 Act sets out the time limits within which enforcement action may be taken. Other than in the case of a change of use of any building to a single dwellinghouse³, the relevant time limit is ten years in respect of a [material] change of use⁴. The notice is, therefore, defective as it does not refer to the correct time period under section 171B of the 1990 Act. Again, I could have corrected the notice to state the appropriate time limit. The appellant has not made a ground (d)⁵ appeal and, as such, a longer time period would not cause injustice.
6. I have not, however, corrected the notice as set out above. The defects I have identified so far are not alone and are not the most serious.
7. An enforcement notice must be drafted so as to tell the recipient fairly what he has done wrong and must do to remedy it. This principle has been considered in detail in settled caselaw, to which I have had regard. The notice in this case alleges that a mixed use of the land is taking place and that part of this mixed use is 'a use to accommodate a metal storage container'. In this case the description of the alleged breach fails to tell the recipient with reasonable certainty what the breach of planning control is. The word 'accommodate' could encompass a range of potential occupiers and uses. It is not, therefore, possible for the recipient of the notice to learn with reasonable certainty what is alleged.
8. The requirements of the notice provide no assistance in clarifying the allegation; they simply require the cessation of the use of the land for the 'unauthorised development' and removal of the metal storage container. For this reason I also find the requirements of the notice to be uncertain as they do not clearly specify what use must cease; the requirements of a notice must flow from the breach of planning control alleged.
9. Whilst I have found the allegation and the requirements to be uncertain, I do not consider the notice to be so seriously defective as to make it a nullity; it is just not worded with sufficient clarity and precision. I have considered whether the notice could be amended to make the allegation and requirements more certain using the provisions under section 176(1)(a) of the 1990 Act. However, any correction or, indeed, variation of the notice to include some other use

² Section 174(2)(c) of the 1990 Act - that those matters (if they occurred) do not constitute a breach of planning control.

³ Section 171B(2) of the 1990 Act.

⁴ Section 171B(3) of the 1990 Act.

⁵ Section 174(2)(d) of the 1990 Act - that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

would be a guess on my part as to what that use might be. It is, of course, open to me to seek the views of the parties on any correction or variation. I have not, however, done so as I am too far from understanding what breach of planning control the Council had intended the notice to attack. As such, I cannot be certain that entering into such discussions would resolve the defects of the notice.

10. Most importantly, I am not satisfied that a variation or correction of the notice would not cause injustice, particularly as I cannot be certain that the appellant would not have approached their grounds of appeal differently or introduced additional grounds of appeal. The appellant may have made an appeal on ground (a)⁶ had the notice alleged a different breach of planning control, whatever that might have been, when issued. This is important as, 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 Regulations⁷ for that fee to be paid once that period has elapsed. The consequence of this is that, if I were to correct or vary the notice to allege some other use as an element of the mixed use, the appellant would not be able to amend his appeal to include ground (a). That would cause the appellant injustice.
11. In view of the defects identified in the notice, the uncertainty with regard to potential corrections or variations, and the consequences of any such changes, I cannot conclude that any correction or variation of the notice would not cause injustice in this case.

Conclusion

12. 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 errors in accordance with my powers under section 176(1)(a) of the 1990 Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
13. In these circumstances, the appeal on the grounds (b), (c), (f) and (g) set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Formal Decision

14. The enforcement notice is quashed.

J Moss

INSPECTOR

⁶ Section 174(2)(a) of the 1990 Act - that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.

⁷ The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012.