



Appeal Decisions

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

Appeals A and B: APP/U3935/C/20/3258937 & 3258938

Land at 1 Loxley Walk, Park South, Swindon, Wiltshire SN3 2DU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Lady Lillie Goddard of Buildingsequity Limited (Appeal A) and Lord Mark Goddard (Appeal B) against an enforcement notice issued by Swindon Borough Council.
- The enforcement notice was issued on 6 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 mobile home as shown in the photographs attached as Appendix A¹.
- The requirements of the notice are:
 - (a) Cease the use of the Land for the unauthorised development and remove from the Land the mobile home and ensure that this item or any similar items are not placed on the land, at any time.
 - (b) Remove all the resultant materials, rubbish and debris as a result of the above works from the land.
- The period for compliance with the requirements is two months from when the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B was proceeding on the grounds set out in section 174(2)(a), (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 under ground (a) and the application for planning permission deemed to have been made under s177(5) of The Act as amended, have lapsed. Accordingly, Appeal B is proceeding only on the ground set out in section 174(2)(c) and (g) of the Act.

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.

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

In each case, the only test is whether the correction or variation will not cause any injustice to the appellants or the local planning authority.

2. The appeal site and land outlined in red on the enforcement notice plan is an end of terrace residential dwelling and associated garden. The breach of planning control as alleged in the notice is '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 mobile home'. 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.
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. 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 dwellinghouse², the relevant time limit is ten years in respect of a [material] change of use³. The notice is, therefore, defective as it does not refer to the correct time period under section 171B of the 1990 Act.
5. The defects I have identified in the notice could be corrected using the powers transferred to Inspectors under section 176(1)(a) of the 1990 Act. I am satisfied that a correction to include reference to a **material** change of use would not cause injustice as it is evident that the appellants understood that the allegation was intended to refer to a material change of use. Furthermore, the appellants have not made a ground (d)⁴ appeal and, as such, reference in the notice to a longer time period would not cause injustice. However, these are not the only, or most serious defects that I have identified in the notice.
6. 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 mobile home'. A photograph of the mobile home in question is also attached to the notice. 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.
7. 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 mobile home. For this reason I

² Section 171B(2) of the 1990 Act.

³ Section 171B(3) of the 1990 Act.

⁴ 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.

also find the requirements of the notice to be uncertain as the recipient of the notice cannot tell with reasonable certainty what steps he has to take; the requirements of a notice must flow from the breach of planning control alleged.

8. 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 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.
9. 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 appellants would not have approached their grounds of appeal differently. Whilst the appeals have been made under grounds (a), (c) and (g), the appellants may also have appealed on other grounds set out in section 174(2) of the 1990 Act, had the notice alleged a different breach of planning control, whatever that might have been, when issued.
10. 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 to either party.

Conclusion

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 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.
12. In these circumstances, the appeals on the grounds (a), (c) and (g) set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Formal Decision

13. The enforcement notice is quashed.

J Moss

INSPECTOR