



Appeal Decision

Hearing Held on 9 March 2021

Site visit made on 19 January 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2021

Appeal Ref: APP/D2510/C/20/3259016

**The land and associated dwelling at The Stables, Halton Fen, Halton
Holegate, SPILSBY PE23 5BE**

- 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 Jeff Stainton against an enforcement notice issued by East Lindsey District Council.
 - The enforcement notice, numbered EC/072/00711/19, was issued on 11 August 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of land to a mixed use of residential and for the sale, display and storage of touring caravans and the siting of a static caravan.
 - The requirements of the notice are:
 - Cease the use of the land for the sale, display and storage of touring caravans and for the siting of a static caravan
 - Remove all of the touring caravans and the static caravan from the land.
 - The period for compliance with the requirements is stated as: 'Two calendar months after this Notice takes effect – by 9th November 2020'
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Procedural Matters

3. The appeal initially proceeded under the written representations procedure. However, having visited the site I considered that a Hearing was necessary. At the Hearing, I raised the issue of whether a further visit was needed. Both parties considered that a further visit was not needed, a view I shared. Accordingly, no further visit was undertaken after the Hearing.

Unilateral Undertaking

4. A unilateral undertaking was submitted by the appellant after the close of the Hearing. I accepted that document but, since the appeal on ground (a) does not fall to be considered, it has no bearing on my decision, except to the extent that the plan attached to it is relevant to my consideration of the planning unit.

The Notice

Problems with the notice

5. I have reservations about the wording of the issued notice. These were discussed at the Hearing and I also raised them in a pre-Hearing note beforehand. The allegation in the notice includes 'the siting of a static caravan'. However, there is no indication in the notice of the use the static caravan is being put to. It has been established by the courts¹ that a notice should not simply allege the stationing of caravans but should specify the use of the land. Accordingly, the notice cannot remain as issued. Additionally, it was clear from my site visit that the site accommodates uses not identified in the mixed use alleged in the notice. Since any allegation of a change of use must accurately identify the use of the land, this aspect of the notice also needs attention. I consider these matters further below.
6. The period for compliance is stated as 'Two calendar months after this Notice takes effect – by 9th November 2020'. Quite clearly the date of 9 November 2020 cannot apply since it has already passed. However, the intention is clear and the notice could be corrected to remove the reference to the date so as to simply refer to a 2 month period. It was accepted by both parties at the Hearing that this change could be made without causing injustice.

Background and the use of the land when the notice was issued

7. The site targeted by the enforcement notice ('the appeal site') is located next to a dwelling – *The Willows*. It was previously used in connection with that property but is now in separate ownership. The appeal site contains a 2 storey brick building which accommodates stables with a residential flat above. I was advised at the Hearing that the upper floor was originally to be used for storage in connection with the stables.
8. On 16 May 2018 the Council issued a Certificate of Lawful Use or Development (LDC) indicating the lawful use of *The Stables* as a residential dwelling. The particulars of the decision indicate that it relates specifically to the first floor flat. The plan attached to the certificate indicates a site which appears to include the stables/flat building and the small courtyard it partially encloses. The LDC does not demonstrate a residential use for any part of the appeal site beyond the area defined in the LDC Plan. The Council subsequently granted planning permission for a first floor extension to *The Stables* to provide a lounge, bedroom and en-suite.
9. Other buildings on the site include a further stable building and a barn. Planning permission for 'Erection of a barn for the storage of horse food' was granted in 2003. The barn has been used by the appellant for storing clothing in connection with an internet sales business, apparently in contravention of a condition attached to the 2003 planning permission. The Council investigated this in 2019 but decided not to take enforcement action. At the Hearing the appellant advised that the barn is also used for cleaning items in connection with the caravan sales business.
10. An area close to the stables and barns is used for the caravan sales business. This area is loose-surfaced and densely packed with caravans. The static

¹ Woodspring DC v SSE & Goodall [1982] JPL 784 and Wealden DC v SSE and Colin Day

caravan/mobile home is located close to these caravans. At the Hearing the appellant advised that it is used by family members for weekend visits.

11. A large proportion of the site is paddock, free from built development. There is also a loose-surfaced horse riding area (manège) as well as a driveway and parking area. A neighbour states that caravans for sale have been placed on the manège. At the Hearing the appellant advised that this has occurred on occasion but that they are not normally kept there.

The Planning Unit

12. The starting point for considering the change of use alleged is identifying the relevant planning unit. Deciding which land comprises the planning unit is a matter of planning judgement, based on the facts of the case. I raised the question of the planning unit at the Hearing. I have also considered the possible alternative site plan submitted by the Council and the plan attached to the unilateral undertaking.
13. The planning unit is often the unit of occupation. In this case the appeal site is entirely within the ownership of the appellant. The appellant and his wife live in the flat on the site and when the mobile home is occupied it is by family members. The equestrian activities on the appeal site are undertaken by the appellant and his wife and the business activities are those of the appellant. Thus, the appeal site is a single unit of occupation.
14. Much of the site is used as paddock and appears unchanged by the matters targeted by the notice. This paddock land is noticeably different in character to the remainder of the site, which has a more developed appearance.
15. The non-paddock land now appears to me to contain a mix of primary uses: the residential flat; the stables, the manège; the caravan sales; the clothing business and the mobile home. The use of part of the site for access and parking is ancillary to these uses as a whole. Although separate, the primary uses are linked to one another. The flat is above the stables and so is physically linked. The stables have a functional link to the manège. The barn used for clothing sales is apparently also used for cleaning items in connection with the caravan sales business. Some of the caravans have been placed on the manège on occasion in the past. The portable office on the site is used in connection with both businesses on the site. The mobile home is occupied by family members when visiting the appellant at *The Stables*. The various uses share the same access and parking area.
16. There remains a relationship between the non-paddock land and the paddocks due to the equestrian use and occupation by the appellant. Nevertheless, when I viewed the site the extent of built development and multiple uses of the non-paddock land meant that it had a markedly different character to that of the paddocks. In my view, and as a matter of fact and degree, a separate, mixed-use planning unit has been created on the non-paddock land.

Whether the notice can be corrected

17. In my view, given my finding above, it was unnecessary for the notice to include the paddock land. However, even with a more tightly-defined site, it is clear that the allegation in the notice does not properly reflect the mixed use taking place on the remaining land. The breach of planning control alleged was 'the material change of use of land to a mixed use of residential and for the

sale, display and storage of touring caravans and the siting of a static caravan'. To reflect the reality of the use of the site when the notice was issued, a more satisfactory description would have been:

'the material change of use of land to a mixed use of a residential flat; the keeping and riding of horses; the storage and distribution of clothing for sale; the storage, display and sale of touring caravans and the siting of a static caravan to provide overnight accommodation for visitors to the site'.

18. The next question is whether the notice can be corrected. I have the power to correct a notice, but only if there would be no injustice to the appellant or the Council. At the Hearing I sought the views of the parties regarding whether injustice would be caused.
19. The appellant has appealed on ground (c). In order to succeed he would have to demonstrate, on the balance of probability, that the mixed use as a whole (that is, all the elements of the mixed use) does not constitute a breach of planning control. However, the appellant prepared his case based on the allegation in the notice. If the notice were corrected along the lines I have outlined, the use alleged would include additional elements. Demonstrating that this very different mixed use is not a breach of planning control is likely to mean that the appellant would wish to revisit his case and possibly revise it substantially. It is also likely that it would affect the ground (a) case the appellant would wish to present, since he would be seeking to demonstrate the planning merits of a different mixed use. It is also possible that it would have a bearing on the particular grounds of appeal the appellant would wish to pursue under s174(2) of the Act.
20. Overall, it appears to me that the effect of changing the allegation in the notice on the way the appellant would wish to approach the appeal could be very marked indeed. Consequently, it would place the appellant at a clear disadvantage and injustice would be caused. I am not satisfied that the discussion at the hearing was sufficient to address that disadvantage, not least because the wording of any corrected allegation remained unresolved at that stage.
21. I am also mindful that widening out the mixed use allegation means that the requirements of the notice would no longer reflect the allegation. Adding to the requirements to reflect the corrected allegation would make the notice more onerous and cause clear injustice to the appellant. Conversely, if the requirements were left unchanged, the provisions of s173(11) mean that unconditional planning permission would be treated as having been granted for any activities which the notice could have required to cease. On the face of it, this would cause injustice to the Council. However, when I raised this at the Hearing, I was advised that the Council did not consider it would incur injustice because it did not regard the other uses of the site as harmful. Accordingly, I accept that it would not be necessary to change the requirements of the notice. No concerns were raised either by the appellant regarding the need to clarify the use of the mobile home in the notice.
22. Nevertheless, for the reasons outlined above I remain of the view that the allegation in the notice cannot be corrected without causing injustice to the appellant. Reducing the site would not resolve matters because the allegation would still be wrong.

Conclusion

23. 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 appeals on the grounds set out in section 174(2) (a) and (c) 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

