



Appeal Decision

Site visit made on 11 August 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2021

Appeal Ref: APP/Y1138/C/21/3273229

Land at NGR 302567 106282 (Culm Springs), Cullompton, Devon

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Roshan Sivlal against an enforcement notice issued by Mid Devon District Council.
 - The enforcement notice was issued on 8 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the carrying out of building operations on the land namely the construction of a building as a dwelling house ("the development") as shown edged blue on the attached plan.
 - The requirements of the notice are:
 - a) Permanently demolish and remove the dwelling from the land, including all materials and debris arising from the act of demolition, including but not limited to the walls, floors and foundations and roof; and
 - b) Permanently remove from the land all paraphernalia including residential paraphernalia and building materials use for or in association with the building of the dwelling and which are not used for agriculture; and
 - c) Return the land to its former use for the purposes of agriculture, equestrian and scaffold storage and distribution.
 - The period for compliance with the requirements is six (6) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (e) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Procedural Matter

2. Nobody from the Council attended at the arranged time of my site visit. After waiting for a while, I discussed with the appellant's agent, the possibility of me entering the site and carrying out the visit unaccompanied. The agent sat in his car whilst I carried out the visit and we did not discuss anything about the case, only the practicalities of carrying out the visit on my own particularly due to the muddy nature of the appeal site.

Reasons

3. The notice, within the breach of planning control section, alleges that the development has involved the carrying out of "building operations" which concerned the construction of a dwelling house. In section 4, the reasons for issuing the notice refer to the breach having taken place within the last "ten years", which is referring to the time limits for taking enforcement action as defined by s171B(1). However, for operational development as alleged in this

case, s171B(1) states that “no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach. The notice in this respect is flawed. A 4 year period should have been cited, given the allegation.

4. I have broad powers under section 176(1)(a) of the 1990 Act as amended, to correct the notice. I can only do so where injustice would not be caused to the appellant or the Council.
5. I cannot know from the submissions whether the appellant, who I accept is represented, would have known that the relevant period was 4 rather than 10 years. Taken at face value, any recipient of the notice may not have appealed on ground ‘d’ (that, at the date when the notice was issued, no enforcement action could be taken) if they felt that they could not provide evidence for 10 years but may have done so if they were aware that 4 years was applicable.
6. It is not clear from the representations whether the building is substantially completed (although its occupation is referred to) and if so, how long ago that happened. It is also not clear to me whether the appellant or occupier could have argued the correct, shorter 4 year period or whether they have been advised of that possibility.
7. The Council, within the second paragraph of section 4 of the notice, also refers to the development including “a material change of use of the land for residential purposes”. I have considered whether I could correct the allegation to being a material change of use of the land with the associated construction of a dwelling house for which a 10 year period of immunity may be applicable. That would broaden the scope of the notice which is generally not acceptable, as it can lead to other issues being raised. The parties have not made submissions about any other issues that could be relevant if I changed the allegation.
8. In my view, by reference to the longer period of immunity as defined by s171B(1) than is applicable to the development as alleged, is an error which cannot be corrected as it could cause injustice to the appellant. As such, I must quash the notice although the Council may be able to issue a further, corrected notice.

Conclusion

9. For the reasons given above I conclude that the enforcement notice is not sufficiently clear or precise. It is not open to me to correct the errors 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 under grounds (a), (e) and (g) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

A Harwood

INSPECTOR