



Appeal Decision

Site visit made on 25 August 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 September 2021

Appeal Ref: APP/P4415/C/21/3273089

Land at car park adjacent 93 Fitzwilliam Road, Eastwood

- 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 Matki Chai Ltd against an enforcement notice issued by Rotherham Metropolitan Borough Council.
 - The enforcement notice, numbered EN2020/0201, was issued on 18 March 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised siting of takeaway container unit.
 - The requirements of the notice are to remove the takeaway container from the Land and cease the use of the land for such purposes.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. The allegation in the notice relates to the siting of the container unit. This wording suggests that the Council regards the breach of planning control as a material change in the use of the land rather than as operational development. This is reinforced by the reference in section 4 of the notice ('Reasons for issuing this notice') to the breach having occurred within the last 10 years; had the breach related to operational development, the relevant period would, in accordance with section 171B of the Act, have been 4 years. The requirement at section 5 of the notice also refers to the use of the land. Thus, it appears that a change of use is alleged.
3. Unfortunately, there are some problems with the notice. First, notwithstanding the reference to a 'takeaway container unit', the allegation does not actually state how the unit (and therefore the site) is being used. 'Siting' could, for example, mean the unit is being stored rather than being actively used. While that does not appear to be the case here, the breach of planning control alleged nevertheless needs to be clearly stated in the notice.
4. Second, the site identified by the notice is extensive and was mostly in use as a car wash when I saw it. Thus, even if the takeaway use could be assumed from the drafting of the notice, that would not reflect the use of the whole site. To correct this, the site would either need to be reduced to relate only to the area used in connection with the container unit, or the allegation changed to

- refer to a mixed use of the whole site. In order to decide on the best approach, the appropriate planning unit would need to be identified.
5. Third, the requirement set out at section 5 of the notice is, 'Remove the takeaway container from the Land and cease the use of the land for such purposes'. Since the use alleged is not clear, the reference to 'use of the land for such purposes' is not clear either; it would be better if the notice stated the use that must cease in specific terms.
 6. A final issue with the notice is that the address could be clearer, in that it does not state the town or postcode and refers to land at a car park, whereas the land was in use as a car wash rather than a car park when I viewed it. However, this issue could be addressed without causing injustice to any party and has no bearing on my decision.
 7. It is established planning law that an enforcement notice must tell the recipient fairly what has been done wrong and what must be done to remedy it¹. I have the power to correct the notice, but only if it would not cause injustice to the Council or the appellant. In this instance the use of the unit as a takeaway might be inferred from the information before me. However, any change to the notice would need to go further than that, to reflect the fact that it relates to a larger site which contains at least one other use. Yet I have insufficient information to frame any revised allegation relating to a mixed use of the site as a whole.
 8. Furthermore, it may be that the Council would wish to consider cutting down the extent of the site rather than alleging a change of use of the whole site. This would require consideration of the relevant planning unit, but I have insufficient information to establish this. In these circumstances, correcting the notice could cause injustice to the Council by undermining what it seeks to achieve. Changing the allegation or the site could also substantially affect the case either party would wish to make.
 9. Finally, in view of all of the above, I do not have sufficient information to replace the requirement at section 5 of the notice with something more specific. Moreover, if I attempted to do so, it could make the notice more onerous, causing injustice to the appellant.
 10. For these reasons I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance. It is not open to me to correct these matters 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 ground (b), as set out in section 174(2) of the 1990 Act as amended, does not fall to be considered.

Peter Willows

INSPECTOR

¹ Miller Mead v MHLG [1963] 1 A11 ER 459