



Appeal Decision

Site Visit made on 1 September 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 October 2021

Appeal Ref: APP/X1545/C/21/3275000

Homelands, Land Adjacent The Bungalow, Southminster Road, Asheldham

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs M Anderson against an enforcement notice issued by Maldon District Council.
 - The notice, numbered ENF/16/00421/02, was issued on 8 April 2021.
 - The breach of planning control as alleged in the notice is unauthorised operational development and material change of use of land.
 - The requirements of the notice are to:
 - a. Cease using the five static caravans (CV1, CV2, CV3, CV4 and CV5) for residential purposes and permanently remove the caravans and associated fencing from the site.
 - b. Permanently remove the two touring caravans (T1 and T2) from the site.
 - c. Permanently cease using the building on the Land for any use in connection with the residential use of the caravans (A2)
 - d. Permanently remove the container from the Land (A3)
 - e. Permanently cease using the structure on the Land for storage (N1)
 - f. Permanently remove the two structures on the Land (S4) and (S5)
 - g. Permanently cease using buildings for storage (S1, S2 and S3)
 - The period for compliance with the requirements is: Three (3) calendar months after the date this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (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.
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Decision

1. Since the notice is found to be a nullity, no further action will be taken in connection with the appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act as amended.

Matters concerning the notice

2. Section 171A (1) (a) to the Town and Country Planning Act 1990 as amended ('the Act') says that the carrying out of development without the required planning permission constitutes a breach of planning control. Section 173 (1) says that a notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of s171A (1) within which, in the opinion of the authority, the breach falls. Section 173 (2) says that a notice complies with subsection (1) (a) if it enables any person on whom a copy of it is served to know what those matters are.
3. Section 173 (3) states that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.

Section 174 (4) states that those purposes are – a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or b) remedying any injury to amenity which has been caused by the breach.

4. The enforcement notice identifies the breach of planning control as 'unauthorised operational development and material change of use of land'. The use of such general terms does not enable any person on whom a copy of it is served to know what the matters which appear to the local planning authority to constitute the breach of planning control.
5. Where the recipient of the notice can find out from within the four corners of the notice what they are required to do or abstain from doing, it may be possible to correct the notice subject to there being no injustice. Section 5 of the notice contains a series of requirements labelled (a) to (g). The requirements correlate to different structures within the site which are labelled in Annex 1 to the enforcement notice.
6. As set out in section 176 of the Act, I have wide powers of correction, so long as I am satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority. I shall therefore consider whether it is possible to correct the notice.

Requirement (a)

7. Requirement (a) requires the recipient of the notice to cease using the five static caravans (CV1, CV2, CV3, CV4 and CV5) for residential purposes and permanently remove the caravans and associated fencing from the site. The requirement to cease using the caravans for residential use is consistent with an allegation for the material change of use of the land to the siting of 5 static caravans for human habitation. During my site visit, it appeared that each of the caravans was being used for human habitation, with evidence of food, cooking equipment and various items of clothing within each of the caravans.
8. Requirement (a) also requires the removal of associated fencing from the site. However, the fencing is not shown on Annex 1 and so it is not clear which fencing is to be removed. Given the penalties for non-compliance with an enforcement notice, it is essential that there is no ambiguity regarding the breach that has occurred and the steps that are required to remedy it.

Requirement (b)

9. Requirement (b) requires the recipient of the notice to permanently remove the two touring caravans (T1 and T2) from the site. Only one touring caravan was present within the site during my site visit. Nevertheless, I must consider how the land was being used at the time the enforcement notice was issued. There was an unmade bed in the touring caravan, which suggests that it is being used to sleep in. It is not clear from the notice whether the Council considered that the touring caravans were being used for residential use or were just being stored on the site.
10. Since the caravans are not buildings and no operational development has taken place, it is essential that the notice specifies what use of land the caravans are sited for. The notice requires the removal of the touring caravans but does not

require the cessation of residential use or storage and so it is not clear, from the four corners of the notice, what breach the Council is alleging with respect to the touring caravans. Given the uncertainty, I cannot be sure it is possible to correct the notice without causing injustice.

Requirement (c)

11. Requirement (c) requires the recipient of the notice to permanently cease using the building on the Land for any use in connection with the residential use of the caravans (A2). A2 was a container with kitchen facilities, washing machine and dryer. The notice describes it as a building but does not require its removal.
12. Under this matter, the Council states that the cumulative effect of the caravans and structures on the site contributes to the harm to the character and appearance of the area. However, the notice does not require removal of the building. Amending the notice to require its removal would make the requirements more onerous and would therefore cause the appellant injustice. If I do not amend the requirements and the appellant complies with the notice, planning permission would be granted for the structure by virtue of section 173(11) of the Act. This is likely to cause the Council injustice.

Requirement (d)

13. Requirement (d) requires the recipient of the notice to permanently remove the container from the Land (A3). From the evidence provided by the Council following my site visit, it seems container A3 has been moved since the enforcement notice was issued and is now roughly in the position A1 is, as shown on the enforcement notice plan. I was not able to access the container during my visit.
14. Following my site visit, the Council provided a photograph which labels structure A3 as 'Office for on-site business'. However, it is not clear from the four corners of the notice whether the Council consider container A3 to be a building or a use of land and if it is a use of land, what that use is. Furthermore, there is no requirement for any use to cease within the notice. Given the uncertainty, I cannot be sure it is possible to correct the notice without causing injustice.

Requirement (e)

15. Requirement (e) requires the recipient of the notice to permanently cease using the structure on the Land for storage (N1). Building N1 appeared to be a Nissen style hut which was used for the storage of vehicles and a mini-caravan.
16. Within its evidence, the Council states that structure N1 was an unused polytunnel frame until 2018 when corrugated cladding was added to the frame by the appellant. This would suggest that N1 is a building which has been erected within the last four years.
17. The Council state that it is the scale, bulk, position and design of the building that has a detrimental impact on the character and appearance of the rural area. However, the notice does not require its removal. Were I to amend the notice to require its removal, this would make the notice more onerous, which would cause the appellant injustice. If I do not amend the requirements and the appellant complies with the notice, planning permission would be granted

for the structure by virtue of section 173(11) of the Act. This is likely to cause the Council injustice.

Requirement (f)

18. Requirement (f) requires the recipient of the notice to permanently remove the two structures on the Land (S4) and (S5). Structure S4 is a partially clad, single storey building, with French doors. I was unable to access the building during my site visit. Structure S5 is a metal container which contained a fridge and a number of boxes containing residential paraphernalia.
19. It is not clear whether the structures are being attacked as buildings or a use of land. While Structure S4 is, in my view, a building given its size, construction and physical attachment to the ground, Structure S5 is a container. Whether a container constitutes operational development will be a matter of fact and degree.
20. There is no requirement to cease the use of either structure. Whilst it may not be necessary to stipulate the use of the building S4 ceases, because a use cannot generally survive the destruction of a building, if the container is a use of land rather than operational development, it is necessary to understand what the Council wishes to cease, as well as the removal of the container. Given the uncertainty, I cannot be sure it is possible to correct the notice without causing injustice.

Requirement (g)

21. Requirement (g) requires the recipient of the notice to permanently cease using buildings for storage (S1, S2 and S3). The Council does not dispute that the buildings have been on the land in excess of 10 years. However, the Council contend that the use of the buildings for domestic storage is a breach of planning control and, in combination with the other breaches of planning control identified, has a detrimental impact on the character and appearance of the area.
22. The notice, however, does not allege 'domestic storage', nor does it allege the material change of use of buildings.
23. I saw that materials and machinery are being stored both within the buildings and on the land surrounding it. It is not clear whether it is the use of the buildings or the use of the land around the buildings which the Council is concerned with. Given the uncertainty, I cannot be sure it is possible to correct the notice without causing injustice.

Structure A1

24. Structure A1 is shown on the enforcement plan but is not referred to in the requirements. The Council advise that structure A1 had been moved to beside structure S3 and was labelled as 'container used as general storage'. Whilst the structure was identified on the enforcement plan, it was not identified in the allegation or the requirements. If I amend the allegation to include the structure, this would expand the breach, which would cause the appellant injustice. Furthermore, there is no requirement that the structure should be removed or that its use should cease.

Summary

25. Within the Council's statement, it is stated that the caravans are understood to have been on site and in use for residential purposes for over 5 years already. It seems likely that the Council is relying on the principle established in case law that an enforcement notice directed at a material change of use can require the removal of ancillary operational development within the ten-year immunity period applying to a material change of use, even if the four year limit has passed if the works were intended to facilitate the unlawful use.
26. Whilst it may be possible to correct the notice to allege the siting of caravans for residential use, the various elements of the notice appear inextricably linked. Disaggregating the notice in this way could have implications for the removal of ancillary operational development, which would cause the Council injustice.
27. Understanding precisely what the allegation is, is essential, not least because the terms of the deemed planning application flow from the matters alleged in the notice. The allegation does not enable any person on whom a copy of it is served to know what the matters which appear to the local planning authority as constituting the breach of planning control are. For the reasons given above, I have found it is not possible to ascertain these reasons for all the breaches from the four corners of the notice. Consequently, I find the allegation and requirements to be so hopelessly ambiguous and uncertain that the recipient would not have been able to tell with reasonable certainty what they had done and what they needed to do to remedy it.
28. Thus, for the reasons given above, the notice fails to comply with section 173(2) of the Act and is a nullity.

Conclusion

29. I conclude that the notice is a nullity. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (c) and (g) 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.

M Savage

INSPECTOR