



Appeal Decisions

Site visit made on 9 September 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05/01/2022

Appeals A and B: APP/W1850/C/21/3273276 and APP/W1850/C/21/3273277

Land at Field Known as Emily's Meadow, Weobley, Herefordshire HR4 8RS (OS Grid Reference Eastings 341316, Northing 251219)

- 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 Mr Darren Pearce (Appeal A) and Mrs Vicki Pearce (Appeal B) against an enforcement notice issued by Herefordshire Council.
- The enforcement notice, numbered EN2021/003196/ZZ, was issued on 16 March 2021.
- The breach of planning control as alleged in the notice is: Without planning permission the unauthorised change of use of land from equestrian to a mixed use of equestrian and land for siting of a Mobile Classroom.
- The requirements of the notice are:
 1. Cease the use of the mobile classroom;
 2. Remove the Mobile Classroom and any associated hardstanding, drainage pipes and electricity cables from The Land shown edged in blue on the attached plan; and
 3. Re-instate all of the disturbed land, shown edged in red on the attached plan and marked 'Mobile Classroom', and restore it to its condition before the breach took place.
- The periods for compliance with the requirements are 120 days for step 1; 150 days for step 2; and 240 days for step 3.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). 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), (f) and (g) of the Act. Since the prescribed fees have not been paid within the specified period, the appeal in 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 grounds set out in section 174(2)(f) and (g) of the Act.

Summary Decisions: The enforcement notice is quashed.

Procedural Matters

1. There is another appeal¹ for this site linked to these appeals. This will be the subject of a separate decision.
2. The site visit was arranged as an accompanied visit and should have been attended by a representative of the Council and the appellant. However, the Council did not attend the visit and could not be contacted. Accordingly, I conducted my visit as an access only visit; the appellant's representative was present but did not accompany me during my inspection of the site or the adjoining highway.

¹ Appeal reference APP/W1850/W/21/3273273.

Reasons

3. I have identified a number of defects in the enforcement notice, which have caused me to consider the position with regard to the validity of the notice or, indeed, whether it is a nullity. In this regard, 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. 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.
4. Firstly, the breach of planning control as alleged in the notice is described as 'the unauthorised change of use of land'. 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. 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 the purposes of section 55(1) of the 1990 Act. 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.
5. In addition to the above, I am concerned that a use 'for the siting of a mobile classroom' as an element of the mixed use alleged is not sufficiently precise. 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 caselaw², to which I have had regard. Reference to the siting of a mobile classroom could be read as involving a use for the storage of the unit. I acknowledge that the first requirement of the notice, to cease the use of the mobile classroom, does not fit with an allegation of its storage. Neither does it provide sufficient certainty as to the use the notice is intended to target. I do not think it is possible for the recipient of the notice to learn with reasonable certainty what is alleged. For this reason I find the notice defective.
6. Notwithstanding the above, I am also concerned that the notice does not include all elements of the mixed use that is taking place on site, and that it is imprecise with regard to the extent of these uses across the site. Having considered the evidence before me, I am satisfied that the appeal site (the land outlined in blue on the enforcement notice plan) is a single unit of occupation and that there are three primary uses of the site that together comprise a mixed use. The first element of the mixed use is for the keeping of horses, identified in the notice as the equine use. As for the second use, I have seen reference to the keeping of animals on site, other than horses. Indeed I observed this to be the case at my site visit. This would amount to an agricultural use of the land, but is not referred to as part of the mixed use.
7. The third element of the mixed use is for the purpose of education. The evidence suggests that this use is facilitated by the mobile class room, but is not confined to it. Classroom based learning takes place within the mobile classroom, but the appellants also refer to individuals taking part in meaningful

² Oates v SSCLG [2018] EWCA civ 2229.

farming-related activities. This suggests that the education use also takes place elsewhere on the appeal site, amongst the equine and agricultural uses, and not just within the classroom.

8. Having regard to the above, it is more likely than not that the use of the appeal site is a mixed use for the keeping of horses, agriculture and for the purposes of education. However, the notice alleges a mixed use of equestrian and land for siting of a Mobile Classroom. Notwithstanding that the agricultural use is omitted from the description, a use 'for the siting of a mobile classroom' does not, in my judgement, describe the educational element of the mixed use with the sufficient degree of certainty. For this reason the notice is also defective.
9. Having regard to the above, I now turn to whether the notice can be corrected and/or varied without causing injustice to any party. With this in mind, including in the description of the mixed use an agricultural use would only acknowledge an element of the mixed use that both parties refer to in evidence. Such a correction would not, therefore, cause injustice. Furthermore, I note that the parties' evidence has centred on an educational use of the site. As such, a correction of the allegation to include an educational use as part of the mixed use of the whole of the appeal site, not just the classroom unit, would also not cause injustice. A correction of the first requirement would also be required in the interests of consistency in order to ensure that the education use of the appeal site ceases. However, the notice only requires the cessation of the use of the mobile classroom and not the whole of the appeal site. To make the necessary corrections to the requirement would, therefore, make the notice more onerous. I cannot, therefore, be satisfied that injustice would not be caused with such a correction.
10. Were I to correct the allegation without making the necessary corrections to the requirements, there is potential for the notice to underenforce with regard to the use of the appeal site as a whole. This would cause injustice to the Council. Accordingly, I can only conclude that the defects of the notice are not capable of correction.

Conclusion

11. For the reasons given above, I conclude that the enforcement notice does not specify with a sufficient degree of certainty what the recipient has done and what they must do to remedy it. 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 appeal on ground (a) for Appeal A and the appeals on grounds (f) and (g) for Appeal A and Appeal B 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