



Appeal Decision

Site visit made on 28 February 2022

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

Appeal Ref: APP/A0665/C/21/3278946

Property and associated land (The Land) adjacent to St Peter's Church, Church Lane, Huxley, Chester

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Danny Lees against an enforcement notice issued by Cheshire West & Chester Council.
 - The enforcement notice was issued on 15 June 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from agricultural use to residential use by the siting of a mobile home.
 - The requirements of the notice are to permanently remove the mobile home and all resulting materials (unauthorised development) from the land outlined in red on the attached plan and restore the land to a grassed field.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the 1990 Act as amended.
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The Enforcement Notice

1. The land identified in the enforcement notice accommodates a mobile home with a porch extension, an area of hard surfacing, a stable block / feed store, a shed and an exercise arena or manège. As such, the land is in a mixed use. The concept of a mixed use being two or more primary uses existing within the same planning unit or unit of occupation. One is not incidental to the other, although there may be incidental uses associated with each primary use. The allegation should, therefore, have cited a material change of use from agriculture to a mixed use for the keeping and exercise of horses, including a manège and a stable block, and the siting of a mobile home for residential purposes. The hardstanding seems to provide an area of parking, which could be considered incidental to the primary uses.
2. A further issue with the enforcement notice concerns the requirement which seeks to have the land restored to a grass field. A requirement cannot seek an improvement on the previous condition of the land and, to avoid this, it is better to simply require the land to be restored to its condition before the breach took place. However, in this case there is a planning permission which must be considered. The Council has granted permission for the erection of a stable block and the siting of a riding arena (Ref 20/02055/FUL). Section 57(4) of the 1990 Act provides that "where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development [in this case, the mixed use] had not been carried out".

3. The enforcement notice should acknowledge the planning permission and the lawful use of the land. The remedy would be to correct the enforcement notice to specify the breach as a material change of use to a mixed use, as set out above. The requirement would then target the use of the mobile home for residential purposes. This would be 'under-enforcing' in respect of the keeping and exercise of horses, which would benefit from the provisions of Section 173(11) of the 1990 Act.
4. I have considered whether I could use my powers of correction under Section 176(1) of the 1990 Act. However, I am not satisfied that I could do this without injustice. Correcting the allegation could have implications for the parties' cases on ground (a) because the merits of mixed use for a residential mobile home and keeping horses may differ from the merits of residential use alone. Similarly, the allegation cannot be corrected in such a way as to change the planning unit and exclude the manège and stable block, because doing so may also prejudice the parties' cases as to the merits of the change of use. Consequently, the enforcement notice is invalid.

Conclusion

5. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. 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 appeal under ground (a) as set out in section 174(2) 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 does not fall to be considered.

Formal Decision

6. The enforcement notice is quashed.

Debbie Moore

Inspector