



Appeal Decision

Site visit made on 21 June 2022

by D Boffin BSc(Hons), DipTP, MRTPI, DipBldg Cons(RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 12th July 2022

Appeal Ref: APP/R4408/C/22/3295994

The Pavilion, Armroyd Lane, Elsecar, S74 8ES

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal is made by Mr James Beachill of Elsecar Cricket Club against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The notice was issued on 3 March 2022.
 - The breach of planning control as alleged in the notice is:
Without planning permission; the material change of use of the Land for the purposes of stationing storage containers used to accommodate a snack bar and shop.
 - The requirements of the notice are to:
 - (i) Cease the use of the land for the purposes set out in paragraph 3 to this notice.
 - (ii) Remove the containers (located in the green rectangle in plan EN1 and shown in the photograph in Appendix 1) from the land.
 - The period for compliance with the requirements is: one month.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. The enforcement notice is quashed.

The Notice

2. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
3. The breach of planning control relates to *'the material change of use of the Land for the purposes of stationing storage containers used to accommodate a snack bar and shop'*. The 'Land' shown on plan EN1, that is attached to the notice, relates to a relatively large area. The evidence before me, and my observations at the site visit, indicate that this area of land contains a sports and social club, pavilion and spectator stand, sports pitches and a large car park. As such, it would appear that the land is likely to be in a mixed use of a number of primary uses which would include a social club, sports facilities and car parking.
4. Moreover, within section 4 of the notice there is also no reference to the primary use/s or mixed use that exist/s on the site. In addition that section concentrates on the containers themselves rather than their use as a snack bar

and shop. It states, *'the presence of the containers is an alien and incongruous feature on the landscape and leads to a visual blight on the land and immediate vicinity.'* It also states that the site is within the Green Belt and paragraphs from a previous version of the National Planning Policy Framework (the Framework) have been quoted. One of those paragraphs (paragraph 145 as quoted - paragraph 149 within the July 2021 – current version) relates to the construction of new buildings. I acknowledge that there is reference to Policy GB3 of the Barnsley Local Plan which relates to changes of use in Green Belt. However, there is no mention of the paragraph in the Framework which relates to other forms of development including material changes in use of the land.

5. Pointing out that section 3 of the notice makes no mention of a mixed use of the land and that the reasons for the notice relate in part to operational development, the Council maintain that *'it is well established that an inspector has a wide discretion to amend and correct any defects or errors in an enforcement notice so long as doing so does not cause injustice.'* Three judgments¹ are relied upon by the Council to support its stance that the notice can and must be corrected if that can be done without injustice to the parties.
6. I acknowledge that the judgments cited held that an Inspector has a duty to try and get the notice in order and that the Secretary of State has a broad discretion to adapt an enforcement notice to overcome defects in it, provided always that in doing so he does not cause injustice. In this case, I have strong reservations about the overall clarity of the notice and whether it can be corrected without giving rise to injustice.
7. The manner in which the allegation is framed, within section 3 of the notice, implies that the only use of the *'land'* is that stated within that allegation. Whereas, it is clear that it is used for a number of other purposes and as stated above it appears that the land is likely to be in a mixed use of a number of primary uses which include a social club, sports facilities and car parking. The alleged use of the land is physically and functionally related to the sports facilities use and appears to be part and parcel of that use. It is not necessary for the previous use/s to be cited in a notice alleging a material change of use. Nevertheless, the primary use or uses or mixed use of the land is neither identified or defined in the notice and there is no indication of what the lawful use/s of the land is/are considered to constitute. Moreover, the references to the construction of buildings within section 4 of the notice is clearly incorrect given that the notice does not allege that operational development has occurred.
8. I consider that I can delete the reference to the Framework's paragraph 145 (now 149) from section 4 of the notice without injustice to either party. However, the lack of clarity and precision that stems from the omission of the primary use/s and/or mixed use of the land makes determining the ground (c) appeal a somewhat difficult and perilous exercise. If I were to attempt to correct the notice, there could be disagreement about what the primary use/s and/or mixed use of the land entail especially since there appears to be a number of organisations using the land.
9. Moreover, that would significantly alter the notice in a way which the appellant has not had the opportunity to respond to. It is clear that the appellant's

¹ *R v SSE & Tower Hamlets LBC ex parte Ahern (London) Ltd* [1989] JPL 757; *Flattery v SSCLG* [2010] EWHC 2868 (Admin); *Hammersmith and Fulham LBC v SSE & Sandra* [1975] 30 P&CR 19

ground (c) appeal is based around the sentence '*the presence of the containers is an alien and incongruous feature on the landscape and leads to visual blight*' that is within section 4 of the notice. Not unsurprisingly, he has not considered whether the alleged use is part and parcel of one of the primary use/s and /or mixed use of the land. Injustice could therefore result. My decision to quash the notice, on the other hand, leaves open to the Council the option of issuing a further, corrected notice, under the provisions of section 171B(4) of the 1990 Act, should it wish to do so.

10. I acknowledge that a correction from a material change of use to operational development would have no impact, in this case, in relation to a potential ground (d) appeal. Nonetheless, if I corrected the notice by changing the alleged breach from a material change of use to either a material change of use and operational development or just operational development there would be injustice caused to the appellant. This is because he would not have had the opportunity to respond to that correction in his ground (c) appeal. He may also have continued with his ground (a) appeal and the deemed planning application.

Conclusion

11. For the reasons given above I conclude that the notice is defective. It is not open to me to correct the notice in accordance with my powers under section 176(1)(a) of the 1990 Act since injustice would be caused were I to do so. Consequently, the notice is invalid and I will quash the notice. In these circumstances, the appeal under ground (c) as set out in section 174(2) of the 1990 Act does not fall to be considered.

D Boffin

INSPECTOR