



Appeal Decision

Site visit made on 15 August 2022

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th September 2022

Appeal Ref: APP/M1710/C/21/3280172

Land at Lot 5B Comley Hill, Rowlands Castle, Hampshire.

- 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 Mr Billy Gordon against an enforcement notice issued by East Hampshire District Council.
 - The enforcement notice, numbered EC/55880/002/ECOU, was issued on 7 July 2021.
 - The breach of planning control as alleged in the notice is the material change of use of land to equestrian, including within the last 4 years, the laying of hard surface and erection of stable block, and erection of fencing (Article 4 Direction).
 - The requirements of the notice are:
 - (i) Cease the unauthorised equestrian use of the Land
 - (ii) Remove the stable block, in the approximate location marked in blue on the attached plan
 - (iii) Dig up and remove the areas of hardstanding from the Land
 - (iv) Remove all fencing from the Land
 - (v) Remove all resultant materials and debris from the Land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) 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.
-

Decision

1. The enforcement notice is quashed.

Procedural matters and the notice

2. S173 sets out the contents and effect of an enforcement notice. In summary these include: S173(1)(a): The matters which appear to the LPA to constitute the breach of planning control; S173(3): The steps which the authority require to be taken, or the activities which the authority require to cease.
3. S173(10) sets out additional matters as prescribed including: (a) the reasons why the LPA consider it expedient to issue the notice; (b) all policies and proposals in the development plan which are relevant to the decision to issue a notice; and (c) the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise.
4. When considering the validity of the notice the test is as described in *Miller v MHLG* [1963] 1 All ER 459, namely whether the notice tells the recipient fairly what they have done wrong, and must do to remedy it. The recipient of the notice 'is entitled to find out from within the four corners of the document what he is required to do or abstain from doing.

5. S176(1) confirms that an enforcement notice may be corrected if there is no injustice to the appellant or the Council. Inspectors have a duty to “try to get the notice in order” if possible. The decision whether to correct or vary the allegation or requirements of a notice therefore rests on whether there would be any loss of natural justice to either party.
6. I note that the address on the notice is simply ‘Lot 5B Comley Hill, Rowlands Castle’. There is no postcode, but the notice refers to an attached plan. Whilst this plan indicates the site boundary in red, it has little additional information, such as property numbers or nearby road names. Consequently, the exact location of the site is not clear from the notice alone. In this instance the importance of clear identification is highlighted, due to the sub-division of a large parcel of land into smaller plots, or lots of similar size. Moreover, there is a lack of natural reference points to help to distinguish one plot from another.
7. To try to overcome this, an alternative plan to assist with site identification was requested from the Council. Several plans were then provided and cross copied to the appellant. However, although two of them gave the locational information required, they appeared to identify different, but overlapping areas of land. Moreover, in contrast to the original plan, the stables had been replotted, hard surfacing marked and an internal track and turning area added.
8. The track and turning area did not form part of the original allegation. I have been provided with no explanation from the Council, whether it was their intention to include it in their more general reference to hard surfacing, or whether this element of the development had been constructed prior to the issue of the notice. Therefore, I am mindful that if I were to substitute the original plan with a new plan, then this may widen the scope of the notice.
9. Similarly, I note that the Council’s statement refers to increased levels of the land and significantly engineered surfaces, with hardcore laid across much of the land beneath the grass surface. There are also references to alterations to the banks close to the watercourse. The Council submit in their statement that the increased height of these engineered surfaces, together with the hard surfaced areas lead to an unacceptable impact on the character and appearance of the area and add to flood risk. However, the alleged land raising and alteration to the banks are not reflected in the allegation. Moreover, their location has not been identified on any of the notice plans.
10. I saw that the style and age of the post and rail fence that bounds the main access and bridleway, is broadly consistent with the other plots. The appellant submits in evidence that a small amount of front fence has been modified. The notice alleges the erection of fencing, but the position of the subject fencing is not indicated on the notice plan. At the time of my visit there was internal electric fencing forming smaller paddocks within the site. Whilst this appeared to be semi-permanent with some timber posts, it nevertheless would be very easy to move from one place to another. I accept that the allegation may include all of the internal and external fencing on the appeal site and thus form part of the deemed application. However, this is not clarified in the Council’s statement which leads to further uncertainty.
11. There was a selection of livestock on site, namely several sheep, two goats, some chickens, ducks, geese and one of the loose boxes was in use as a brooder for young poultry. The Council in their statement recognise the existence of both horses and livestock on the land. However the notice alleges

a material change of use to equestrian, rather than a mixed use. I have little evidence from the appellant, for example, an Agricultural Appraisal or business plan, to determine whether, on the balance of probability, the livestock are kept for the purposes of a trade or business, or a leisure pursuit.

12. Although there were no horses when I visited, I accept that one pony is regularly kept, or grazed on the site. The appellant submits that the pony is used in connection with the agricultural use. However, I saw no evidence of horse drawn ploughs, harrows, or carts on the land. A small quantity of saddlery, together with a ride on mower was being kept in the stable block. I acknowledge that the pony may assist with the upkeep of the land. However, that in itself, does not necessarily mean that the site is used wholly for agricultural purposes. Moreover, the use of the land for other people's horses and the design of the stables, whilst not determinative, is more akin to an equestrian use.
13. Consequently, from the evidence before me, the allegation would be better described as a mixed use. For example, a material change of use of the land to a mixed use; either for the keeping of horses and agriculture, or a mixed use for the keeping of horses and livestock/leisure use, dependant on the facts.
14. Overall, for the reasons given above, it seems to me that the notice, as issued, is ambiguous and lacks the necessary clarity, on its face. It fails to tell the recipient fairly what (as the Council sees it) he has done wrong, and what must be done to remedy the matter. Moreover, I am not satisfied that I can substitute the notice plan, correct and vary the notice without causing injustice to the parties. I find that the notice is invalid and should therefore be quashed.

Conclusion

15. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance and the land where the breach of planning control is alleged to have taken place.
16. It is not open to me to correct the errors 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.
17. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (c) and (f) 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.

Hilary Orr

INSPECTOR