



Appeal Decision

Hearing Held on 4 October 2022

Site visit made on 4 October 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 19 October 2022

Appeal Ref: APP/P1045/C/21/3284351

Armlees Farm, Ryder Point Road, Wirksworth, Matlock DE4 4HE

- 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 James Slater against an enforcement notice issued by Derbyshire Dales District Council.
- The enforcement notice was issued on 23 September 2021.
- The breach of planning control as alleged in the notice is the change of use of the agricultural building and associated land to HGV and vehicle repair workshop (Use Class B2) use unconnected to agriculture.
- The requirements of the notice are:
 - a) Permanently cease the use of the building for HGV and vehicle repair use (Class B2) unconnected to agriculture on the holding.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed.

The Enforcement Notice

1. The requirements of the Notice should square up with and follow logically from the allegation, with regard to what an enforcement notice may require under s173(3)-(7). It is within an Inspector's power to bring the steps into line with the allegation or make consequential changes to the requirements pursuant to the allegation being corrected. Any corrections or variations to the requirements may be made, even if they would make the Notice more onerous, so long as there would be no injustice to either the appellant or local planning authority. It should not be assumed that adding to the requirements would automatically cause injustice.
2. Difficulties are likely to arise when the allegation is incorrect such that the requirements may be incomplete. In this case I have noted that the alleged breach of planning control relates to the agricultural building and associated land, but the requirements require cessation of the use of the building alone. In other words, the requirements appear to be incomplete and the question arises as to whether or not compliance with the requirements of the Notice would allow the continuous use of the associated land for HGV and vehicle repair workshop (Use Class B2).
3. In such circumstances there are a number of options to consider. Firstly, changing the scope of the allegation and requirements could cause injustice to the appellant by making the Notice more onerous to comply with. This is likely

to be the case if, as a result, the appellant ends up worse off than if there had been no appeal. Secondly, changing the scope of the allegation but not requirements could cause injustice to the Council by giving rise to the prospect of planning permission being granted via s173(11) for a use including or comprising the additional activity or activities alleged. Thirdly, either approach could cause injustice to either party by changing their case on the grounds of appeal.

4. It is clear to me from the wording of the Notice, written submissions and oral comments made at the Hearing that the Council's intention is to require the appellant to permanently cease the unauthorised site comprising the building and associated land. Varying the requirements of the Notice to add the permanent cessation of the associated land to HGV and vehicle repair workshop use would expand the requirements and the appellant would indeed be worse off than if there had been no appeal.
5. The Council argues that the building has a curtilage and such land would be captured by the requirement to cease the unauthorised use on that land. However, the alleged breach is very clearly related to the building and the land and therefore the omission of the associated land in the requirement could be reasonably interpreted as not requiring the use on the associated land to cease. Indeed, in my judgement, should the Notice be fully complied with, planning permission would be granted through s173 of the 1990 Act for the use of the associated land for HGV and vehicle repair use. To alter the requirements of the Notice to deny the appellant of such rights would cause injustice to the appellant. Consequently, the option of changing the scope of the requirements is not open to me.
6. One other option may be to vary the Notice by deleting from the alleged breach of planning control the reference to the associated land. However, it is clear to me that this may result in the continuation of the use of the land for the unauthorised use. The overall purpose of requiring the cessation of the unauthorised use of the building and associated land would fail. Furthermore, since both main parties' cases are made with reference to the building and associated land, altering the scope of the alleged breach may cause injustice to both parties by changing their cases being made on the grounds of appeal.
7. Therefore, in these specific circumstances, I do not consider that correcting or varying the Notice could reasonably be done without causing injustice. Therefore, it should be quashed as inaccurate and incapable of correction without injustice to the appellant or other relevant occupiers as defined in s174(6). Since the local planning authority did not intend to omit the reference to the associated land and would want the activity to cases on such land, they may be able to issue another enforcement notice.

Conclusion

8. For the reasons given above I conclude that the enforcement notice does not ensure that the requirements follow logically from the allegation. It is not open for 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 grounds (a), (d), (f) and (g) 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 do not fall to be considered.

Formal decision

9. The enforcement notice is quashed.

A A Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Roger Yarwood - Agent
James Slater - Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Arbon – Senior Planning Officer
Chris Whitmore – Development Manager

INTERESTED PERSONS:

Richard Sandell