



Appeal Decisions

Site visit made on 10 January 2023

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 April 2023

Appeal A Ref: APP/A2470/C/22/3295642

Appeal B Ref: APP/A2470/C/22/3295643

Hazel Hill Farm Wing Road, Morcott, Rutland LE15 9DA

- Appeals A and B are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Paul Bird and appeal B is made by Miss Louise Holland against an enforcement notice issued by Rutland County Council.
- The notice was issued on 25 February 2022.
- The breach of planning control as alleged in the notice is without planning permission;
 - (i) The material change of use of the Land, from agricultural use to a mixed use of agriculture and residential occupation.
 - (ii) The erection of a timber building shown as a pink rectangle on the attached Plan A.
- The requirements of the notice are:
 - (i) Cease the residential use of the Land.
 - (ii) Demolish the Building erected in the approximate position shown as a pink rectangle on Plan A.
 - (iii) Remove from the land:
 - (a) All the materials resulting from the demolition of the Building referred to in (ii) above including the hard standing.
 - (b) All the domestic paraphernalia and leisure equipment.
- The periods for compliance are:
 - (i) Compliance with the requirements at paragraph 5(i) above shall be three (3) months from the date on which this Notice takes effect.
 - (ii) Compliance with 5(ii) and 5(iii) above shall be six (6) calendar months after the date on which the Notice takes effect.
- Appeals A and B are proceeding on the grounds set out in sections 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal A is also proceeding on the ground set out in section 174(2)(a). 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.

Decisions

1. The enforcement notice is quashed.

Application for costs

1. An application for costs was made by Mr Paul Bird against Rutland County Council. This application is the subject of a separate Decision.

The Notice

2. *Miller-Mead*¹ established that the appellant must be able to understand from within the four corners of the notice what the allegation is and what the Council is expecting the recipient to do to comply with the terms of the notice. The land identified in the notice is outlined in red on the attached plan and is known as Hazel Hill Farm. It is clear what land the notice relates to.

¹ *Miller-Mead v MHLG* [1963] 2 WLR 225

3. The land contains several buildings and structures and is used for agricultural and residential purposes. The buildings and structures include a building used as a dwellinghouse, an agricultural barn, polytunnels, a former underground vegetable clamp now used as an incidental domestic store, a storage container, livestock shelters, fencing and a customer car park. The allegation states that there has been a material change of use to '*a mixed use of agriculture and residential occupation*'.
4. '*Residential occupation*' is not a use of land. Furthermore, land is not normally used for residential purposes without some form of shelter. Where use for residential purposes is alleged, even as part of a mixed use, it would generally involve the use of a building as a dwellinghouse. What form the residential element of the mixed-use takes is therefore unclear from the allegation and it would need to be corrected in some form.
5. The second part of the allegation refers to '*the erection of a timber building shown pink on the attached plan*'. The use of the building erected is not specified, nor does it need to be. From my assessment of all the evidence, it seems to me that it is the use of this building as a single dwellinghouse that constitutes the residential element of the alleged mixed use. There is however nothing within the notice to show that the building shown pink on Plan A is being used as a single dwellinghouse.
6. There is no requirement for the reasons for issuing the notice to include the relevant period within which immunity from enforcement would be achieved. It is however common practice for the reasons to include such information. If it transpires that the immunity period is incorrectly identified, it will not make the notice a nullity.
7. In this case, the alleged mixed use attracts an immunity period of 10 years, while the erection of a building attracts an immunity period of 4 years. Had the use of a building as a single dwellinghouse been alleged, that would also have attracted an immunity period of 4 years. The reasons for issuing the notice make no reference to the 10-year period and claim that the 4-year period is disqualified under the Conor principle [sic] as the Council was positively deceived. The identified period is suggestive of, but does not confirm, the material change of use of a building to a single dwellinghouse.
8. The reasons given in the notice refer to it being an inappropriate location for the erection of new dwellings and set out policies relevant to the erection of new dwellings. While there is a passing policy reference to change of use to residential use, the reasons are most suggestive of it being the erection of a dwelling that has occurred. From the appellant's evidence, a dwelling has not been erected. Furthermore, the reasons offer no clarity as to what primary uses make up the components of the alleged mixed use or why it is expedient to take enforcement action against such a mixed use.
9. Even if precise and unambiguous reasons for issuing the notice for the matters alleged could be identified, any variation of these reasons would prejudice the appellant's case. So, while the notice may not be hopelessly ambiguous, it leaves doubt over what is being alleged.
10. The appellant and Council's views were sought on the content of the notice and whether it could be corrected without causing injustice. The Council failed to clarify what was being alleged, instead referring only to what the appellant's

evidence confirms and reiterating their submissions on deliberate concealment. The Council assert that the appellant fully understood the allegation and further suggest that it is within my power to vary or correct any defect, error or misdescription in the notice. They do not however, provide any suggested wording for such a variation or correction.

11. The appellants reaffirmed the concerns set out in their initial submissions regarding the defects they consider are contained in the notice. Furthermore, they confirmed that in order to interpret the allegation and reasons for issuing the notice, they had regard to the Council's reasons for refusing the appellant's lawful development certificate application (LDC), which referenced both s171B(1) and s171B(2). Neither the notice nor the LDC references s171B(3), the 10-year immunity period relevant to a material change of use to a mixed use, and the appellants confirmed their case does not address this point.
12. The components of the mixed use remain unclear. Whether the Council sought to enforce against the 'erection of a dwelling' or the 'erection of a building and its subsequent change of use to a single dwellinghouse' has also not been clarified. Any correction of the allegation could therefore deprive the appellant of an opportunity to have appealed under other grounds, thereby causing injustice.
13. For the reasons set out above, the deficiencies within the notice cannot be corrected in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since it would cause injustice where I to do so. Consequently, the enforcement notice is invalid and will be quashed. In these circumstances, the appeal under the various grounds as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

M Madge

INSPECTOR