



Appeal Decision

Site visit made on 2 March 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2023

Appeal Ref: APP/M1710/C/21/3288365

Land South of Spring House, Stairs Hill, Empshott, Liss, GU33 6HR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Salim Ullah (Empshott Farm) against an enforcement notice issued by East Hampshire District Council working in partnership with South Downs National Park Authority.
 - The notice was issued on 5 November 2021.
 - The breach of planning control as alleged in the notice is within the last 10 years and without planning permission, a material change of use of land to a mixed use of agricultural and recreational.
 - The requirements of the notice are to:
 - (i) To cease the use of the caravan for recreational use, hatched in the approximate position on the attached plan.
 - (ii) Remove the caravan from the Land edged red on the attached plan.
 - (iii) Remove all resultant materials from the Land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The enforcement notice is quashed.

Reasons

2. A notice must be drafted fairly to tell a recipient what he has done wrong and what he must do to remedy it¹. As held in *Miller-Mead*², a notice may be a nullity if it is 'hopelessly ambiguous and uncertain'.
3. Although I have wide powers to correct a notice under s176(1) of the 1990 Act, they only apply if I am satisfied that doing so would cause no injustice to the appellant or the Council.
4. In this case, the alleged breach is a material change of use of land to a mixed use of agricultural and recreational. The term 'recreational' is potentially vague and may not meet the test in *Miller Mead*. It is therefore important to understand what the Council mean.
5. The reasons for issuing the enforcement notice refer to the development creating a self-contained residential living accommodation used for recreational purposes beyond an identified settlement boundary. The requirements essentially focus on ceasing the use of the caravan at the site for recreational use and its removal from the land.

¹ S173 of the Town and Country Planning Act 1990 as amended (the 1990 Act)

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

6. Putting to one side the question as to how a change of use of the land to a mixed use may create a unit of self-contained residential living accommodation, those reasons and requirements imply that the alleged recreational use is a residential use of the caravan. Indeed, the Council refer to numerous complaints that confirmed that *'the appellant was in fact living in the caravan and using it when he visited most days and facilitated a place of rest for various persons over many weekends throughout the year'*.
7. On that basis, the alleged development would be more accurately described as a material change of use of the land to a mixed use of agriculture and residential through the stationing of a caravan.
8. However, against the ground (b) appeal the Council state that the *'sites material use is alleged to be a mixture of agriculture and recreation on the basis of the agriculture operations of the site amount to no more than a hobby farm than that of a business operation'*. The Council also refer to the land use being one of *'a very small hobby operation of the production of eggs and a regular occurrence of many visitors using the site for recreational activity with camping and weekend visits from visitors and family, using the site for the purposes of recreation and agricultural use'*.
9. The Council conclude that *'there is a material change of use due to the intensity of the visitors coming to site on a regular basis. The appellant is active in promoting the site for people to use for a more of a leisure or recreational reason than that of pure agriculture'*.
10. Those submissions appear to imply that the Council consider the recreational use to be, or include, hobby farming. If so, that should be set out in the allegation.
11. I do not consider the alleged recreational use to be hopelessly ambiguous and uncertain so as to render the notice a nullity. Nevertheless, for the reasons explained, the allegation is not as clear as it should be in telling the appellant what he has done wrong. Consequently, to put it on a proper footing, it would need to be corrected as described. However, doing so could result in injustice to the Council if a more detailed allegation were not to properly encompass its concerns. Injustice could also be caused to the appellant as the scope of the allegation would potentially be expanded.
12. Moreover, the requirements of an enforcement notice should also square up with and follow logically from the allegation. That isn't achieved in this case. The allegation is a material change of use of the *land* to a mixed use of agricultural and recreational whereas the requirements are to cease the use of the *caravan* for recreational use, along with its removal from the land.
13. The stationing of a caravan is normally taken as constituting a use of the land and the notice does not require the recreational use of land to cease. Consequently a 'recreational use' of all the land subject to the enforcement notice, not just where the caravan is stationed, could be granted unconditional planning permission under s173(11) of the 1990 Act³. For the same reasons,

³ S173 of the 1990 Act provides that where an enforcement notice in respect of any breach of planning control could have required any activity to cease but does not do so, and all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of s73A in respect of development consisting of the carrying out of the activities.

that would also apply to any hobby farming, as the notice doesn't require that to cease either.

14. Clearly, correcting the notice to address those aspects would significantly expand the scope of the requirements of the notice and cause injustice to the appellant.

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 and the steps required for compliance.
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 appeal on the grounds set out in section 174(2)(b), (c), (e) and (f) the 1990 Act and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Richard S Jones

INSPECTOR