



Appeal Decision

Site visit made on 27 February 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 June 2023

Appeal Ref: APP/D2320/C/22/3298722

Land at Whins Lane, Wheelton, Chorley PR6 8HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Michael Walmsley against an enforcement notice issued by Chorley Borough Council.
 - The notice was issued on 11 April 2022.
 - The breach of planning control as alleged in the notice is unauthorised material change of use of land ("the Land") and associated unauthorised operational development to facilitate that change of use to a mixed use of agricultural, storage and leisure use.
 - The requirements of the notice are to:
 - i) permanently cease the use of the land for storage and leisure purposes, including, (but not limited to) the storage of vehicles, horse boxes, trailers, stored wooden posts and materials, stone flags, bricks, building materials and hardcore.
 - ii) remove all horse boxes, trailers, wooden posts and materials, stone flags, bricks, building materials and hardcore stored on the land from the land.
 - iii) permanently remove from the land the unauthorised operational development consisting of the vehicles hardstanding areas, wooden toilet block, raised patio area, fencing and gate to the rear and side of the raised patio area used to facilitate the material change of use of the land.
 - The periods for compliance with the requirements are:
 - a) in respect of 5.i) and 5.ii) within 1 (one) month after the notice takes effect.
 - b) in respect of 5.iii) within 3 (three) months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. I have a duty to ensure that the enforcement notice is in order. The enforcement notice alleges operational development and a material change of use. The former is alleged to relate to the latter.
3. Section 173(1)(a) of the Act sets out that an enforcement notice must state "the matters which appear to the local planning authority to constitute the breach of planning control." An enforcement notice complies with this requirement if it enables any person receiving a copy of the notice to know what those matters are. In deciding whether a notice satisfies the statutory requirement a test applied is whether the notice fairly tells the recipient what they have done wrong and what they must do to remedy it. The recipient must also be able to find out from within the four corners of the document what they are required to do. The requirements should square up with and follow logically from the allegation.
4. Under s176(1) of the Act, as amended, it is open to me to correct any defect,

error or misdescription in the enforcement notice or to vary its terms provided I am satisfied that the correction or variation will not cause any injustice. This power extends to the substitution of the plan, providing any amendments would similarly cause no injustice. The Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing.

5. Part b) in the time for compliance refers to requirement 5.iii). However, there is no requirement 5.iii) on the notice. Instead, there are two 5.ii)'s. This is a straightforward drafting error which I have corrected in the banner heading as it does not cause injustice to the parties given part 5 of the notice is clearly set out into three parts.
6. In terms of the substance of the notice, it is alleged that part of the mixed use is for leisure. The term 'leisure' is not defined, and the reasons for issuing the notice do not clearly outline what is meant by reference to a leisure use. The appellant maintains that the land is in agricultural use. There is no dispute between the parties that the land has been used for agriculture in accordance with s336(1) of the Act. I agree, and I have no reason to doubt that this is the lawful use of the land. Even so, there does seem to be activities on the land that go beyond and are inconsistent with an agricultural use. However, it is difficult to identify precisely what this use may be or whether a material change of use that includes leisure has occurred as alleged.
7. The evidence before me indicates that the materials brought onto the land have been done so in conjunction with the agricultural use as they have been used to form planting beds. Whilst the materials may not be used straight after being brought onto the land, any storage is incidental to the primary agricultural use. Similarly, the trailer and horse boxes are incidental to the primary agricultural use as they are used to store tools, equipment, materials or provide welfare facilities.
8. Hence, on the evidence before me, I do not consider that the alleged material change of use has taken place. I therefore sought the parties' comments as it was not apparent to me that a material change of use as alleged has taken place. Neither party has questioned my finding in their comments.
9. Insofar as the operational development, and the meaning of 'development' in section 55(1) and (1A) of the Act, the time needed to build the wooden toilet block and the raised patio may have been short, and both structures may both be small and constructed from various parts, but they are both operations that would normally be undertaken by a person carrying on business as a builder owing to the tasks involved, work needed to form them, and the skill involved. This is because the toilet block, even without a permanent base, required suitable materials to be collated, measured, fixed together with screws and finished with a roof. Furthermore, to form the raised patio, ground levels were raised with backfilling material before sleepers were added to enclose and form a level surface before soil and chippings were added. Although the appellant may have competent building skills, they are therefore 'development'.
10. As I have found that there is no material change of use of the land, the fencing and gate cannot therefore be said to facilitate it. The appellant says that they are permitted development. This may or may not be the case, but it is not a matter for me for reasons that I will subsequently set out.

11. As a matter of fact and degree, I consider that the stone chippings that form the vehicle hardstanding are operational development that go beyond the agricultural use given the size of the site, the permanent physical alterations to the land, and as they facilitate access to and from the land to the road.
12. This operational development goes beyond and is inconsistent with an agricultural use. I therefore sought the Council's comments on whether it was still content to pursue the remedial steps stipulated in the notice, and if so, to what extent did it wish to pursue them. In response, the Council confirmed that they are content to pursue the remedial steps stated in the notice and pursue the removal of the unauthorised development.
13. The requirements of the notice should square up with and follow logically from the alleged breach of planning control. Due to my findings, the allegation would need to be considerably changed as the operational development is said to be associated with the alleged unauthorised material change of use of the land. Furthermore, the Council suggests pursuing requirement iii) relating to the operational development, but this is drafted on the basis that they facilitate the change of use of the land. Bearing both in mind, there would also be fundamental changes to the Council's reasons for issuing the notice.
14. Noting this, the appellant says that they may well have argued the grounds of appeal differently, with ground (a) certainly have been appealed in relation to the operational development, and ground (d) potentially forming part of the appeal. This is obviously with the benefit of my finding about the change of use. However, setting aside the appellant's point about the fee for pursuing ground (a), I agree that there would be different policy considerations to take account of if ground (a) was pursued for the alleged breach and just the operational development. The difference would also likely affect the drafting of the notice and in relation to an appeal under ground (d) alter the immunity period from 10 years to 4 years. In short, the parties' approach to the appeal and the outcome may be different.
15. For these reasons, the allegation and none of the requirements can be considered as sufficiently precise and unambiguous; something one would reasonably expect of a legal document, and certainly one representing a charge on the land. Having regard to the *Miller Mead v MHLG* [1963] 2 WLR 225 judgement, I consider the current notice's construction is so ambiguous and uncertain to the point that the owner or occupier could potentially not tell in what respect the land had been developed without planning permission or further, that they might interpret, with reasonable certainty, what steps had to be taken to remedy the alleged breach.
16. Taken as a whole, I am concerned that the enforcement notice is so littered with errors, of varying importance, that when taken together, they collectively strongly suggest its invalidity. On this basis, I, doubt whether, in the form issued, the notice provides the certainty necessary for it to have a reasonable chance of success. If I were to try to make the significant corrections necessary, I am of the view that this would result in injustice to the appellant for the reasons that they set out. Therefore, I find that this notice, as issued, is incapable of correction.
17. For the reasons given above, I conclude that the description of the alleged breach of planning control is not correct, and the stated requirements do not cogently relate to the alleged breach of planning control specified. Therefore, it is not open

to me to correct the error in accordance with my powers under section 176(1)(a) of the Act as amended, since injustice would be caused were I to do so.

18. The enforcement notice is invalid and will be quashed. In these circumstances, the appeals on the grounds set out in section 174(2)(b), (c) and (f) of the Act as amended do not fall to be considered.

Conclusion

19. 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. 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. In these circumstances, the appeal on the grounds set out in section 174(2)(b), (c) and (f) of the 1990 Act as amended do not fall to be considered.

Andrew McGlone

INSPECTOR