



Appeal Decision

Site visit made on 4 July 2023

by Ms S Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2023

Appeal Ref: APP/V0510/C/22/3292479

Mount Pleasant Farm, 66 - 68 Main Street, Pymoor, Ely, Cambridgeshire, CB6 2DY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ross John Taylor against an enforcement notice issued by East Cambridgeshire District Council.
- The notice, numbered USE/18/00188EN1, was issued on 6 January 2022.
- The breach of planning control as alleged in the notice is - without planning permission, the material change of use of the land from agricultural use to a mixed use of leisure and recreational and use for residential purposes.
- The requirements of the notice are: (i) cease the use of the land for non-agricultural purposes and remove any items associated with the unauthorised use, (ii) cease the use of the building on the land for non-agricultural purposes and remove any items associated with the unauthorised use, including the gym equipment, (iii) remove from the land affected any items associated with the unauthorised use, including removing the raised patio, the jacuzzi pool, the surrounding pool enclosure, the sauna, the ornamental planting, and any domestic items/paraphernalia from the land, and (v) permanently remove all constituent materials, resulting from the works listed above, 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), (b), (c), (d) 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.

The Notice

1. The allegation in the enforcement notice is wrong as it alleges a mixed use, (leisure/recreational/residential). A mixed use is where there is more than one primary use but in this case there is no evidence from the Council that there may be more than one primary use. The evidence in the Council's statement alleges that the building and land is being used for purposes incidental to 1 Mount Pleasant Cottages, a dwellinghouse. There is no evidence of a leisure/recreational use taking place that is unrelated to the dwelling. I could correct the allegation but this is not the only problem with the Notice.
2. In respect of the requirements of the Notice, under steps (i) and (ii) the requirements should refer to the cessation of a specific alleged unauthorised use e.g. as a garden, etc. It should not require the cessation of the use for "non-agricultural purposes". This is because, you cannot prevent a use that would not constitute development. In this respect, the Council exceeds the purposes of remedying the breach of planning control.¹

¹ S.173(4)(a) Town and Country Planning Act 1990

3. Furthermore, the enforcement notice requires any items associated with the unauthorised use to be removed, both on the land and in the building. For the alleged unauthorised use of the building, only the gym equipment is specifically required to be removed in step (ii). This leaves in doubt what else has to be removed. For example, it is unclear as to whether the kitchen would be required to be removed as the Notice does not specifically require its removal.
4. There is a similar problem in respect of the land. Whilst I appreciate that features on a site can change, neither party has drawn my attention to any changes that have taken place since the notice was issued. Step (iii) requires things to be removed "including removing the raised patio, the jacuzzi pool, the surrounding pool enclosure, the sauna, the ornamental planting" and to "any domestic items/paraphernalia". I saw on my visit that as well as a raised patio referred to in Step (iii), there was an additional patio (also slightly raised) next to the house and a raised bed containing trees against the boundary wall. The raised beds are connected to the additional patio next to the house and extend towards the building subject of the Notice.
5. The plan for the Notice appears to include part of the additional patio and most of the raised beds but they are not specifically mentioned in the Notice. However, the area of the parts of the additional patio/raised beds which are included in the enforcement notice plan also appear to be included within the approved site layout plan for planning permission 15/01234/FUL. It also seems to me that part of the mown area included in the enforcement notice plan is also included within the red edge of this planning permission. It is not clear if the additional patio, or the raised beds are targeted by the notice and its requirements and if so, how much of them. It is also unclear whether trees in the raised beds would constitute ornamental planting. Therefore, there is doubt about what needs to be removed.
6. *Miller-Mead v MoHLG [1963] 2 WLR 225* establishes that an enforcement notice must tell the recipient fairly what he has done wrong and what he must do to remedy it. In this instance, the ambiguity is such that the notice does not adequately specify what must be done to remedy the breach of planning control. The lack of clarity is such that I am unable to correct the notice without the risk of causing injustice.
7. Under s167(1)(a) powers of correction apply to any defect, error or misdescription in the enforcement notice. Powers of correction may be exercised in respect of any errors, including requirements. Any corrections or variations to the Notice 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 the local planning authority.
8. Although I could correct the allegation without causing injustice to the parties. There are other defects: The requirement of ceasing "non-agricultural purposes" exceeds what is necessary to remedy the breach and the requirements in respect of what exactly is to be removed is unclear. That being the case, I do not see how I could correct the notice without causing injustice to the parties.

Conclusion

9. For these reasons I conclude that the notice is a nullity. In such circumstances, the appeal under the grounds 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

10. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding, the local planning authority should consider removing any record of this null notice from the register kept under s188 of the Act.

Ms S Watson

INSPECTOR