



Appeal Decision

Site visit made on 27 June 2023

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date **10 August 2023**

Appeal Ref: APP/R4408/C/22/3300185

Land on the East Side of Sandybridge Lane, Shafton, Barnsley S72 8PL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr J Price against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The notice was issued on 13 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land for:
 - i. The siting of two static caravans for human habitation.
 - ii. siting of a horsebox, the erection of stable blocks, the erection of outbuildings and the use of land for an equestrian paddock.
 - iii. The use of the land for "The Ranch Stables" with associated storage of materials, vehicles and animals.
 - The requirements of the notice are:
 - (i) Cease the unauthorised activity specified in paragraph 3 (i-iii) at the Land.
 - (ii) Remove all unauthorised materials specified in paragraph 3 (i-iii) from the Land; restoring it to its previous condition, prior to the breach of planning control taking place.
 - The period for compliance with the requirements is SIX MONTHS.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (g) 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.
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Decision

1. The enforcement notice is quashed.

Procedural Matter

2. An Accompanied Site Visit was arranged. Due to unforeseen circumstances, the Council failed to be represented. Rather than aborting the site visit, I carried out an Access Required Site Visit. Given the presence of animals on the land and within the buildings and other structures, for health and safety reasons, the appellant had to remain with me during the site visit. The merits of the case were not discussed. The Council has subsequently confirmed their satisfaction at the way the site visit was concluded.

Reasons

3. S173(2) of the 1990 Act¹ says an enforcement notice complies with s173(1)(a) of the 1990 Act if it 'enables any person upon whom a copy is served to know what those matters are', being those matters alleged to constitute a breach of planning control. The relevant test is set out in *Miller Mead v MHLG* [1963] 1

¹ Town and Country Planning Act 1990 as amended

A11 ER 459, namely whether the enforcement notice tells the recipient fairly what they have done wrong and must do to remedy it.

4. I saw that the land identified in the enforcement notice (Notice), outlined in red on the attached plan, encompasses the property known as 'The Ranch Stables'. Within this land were 2 static caravans being used to house poultry and for storage purposes, a timber shed being used for storage purposes, a poultry house, an agricultural building with lean-to extension divided into stalls for horses and hay storage, a stable block, a building used to accommodate horses and ancillary storage, a welfare cabin, a wooded area used as a paddock and two areas of hard standing; one fenced and used for horse training, and one used for vehicular parking and access purposes.
5. The allegation is set out as if three separate uses are being carried out on the land, but where each of these three separate uses are taking place is not shown on the attached plan. The siting of two static caravans for human habitation is clearly a use of land. While the siting of a horsebox could be a use of land, the purpose for which the horsebox is sited would need to be specified, but it is not. The erection of stable blocks and outbuildings is operational development, not a use of land. While those stable blocks and outbuildings may facilitate a material change of use, the corresponding use is not clear from the allegation.
6. The reasons for issuing the Notice refer to 'the existing use of farming or agriculture' and 'business existing at the land'. They also identify 'The Ranch Stables' as being 'commercial operations'. It is unclear whether these other uses are those supposedly identified in the allegation or are additional uses that should also have been included. The reasons for issuing the Notice therefore allude to a mixed use occurring on the land, however it is unclear from the allegation and the reasons what other use or uses, in addition to the siting of two static caravans for human habitation, make up a mixed use.
7. The steps to be taken to remedy the breach of planning control require the unauthorised activity specified in the three part allegation to be ceased and all the unauthorised materials specified in those three parts to be removed, as well as restoring the land to its previous condition. The allegation is supposed to identify a material change in the use of the land, not 'unauthorised activity'. Step 1 is therefore imprecise and ambiguous. In only requiring the removal of 'all unauthorised materials' Step 2 appears to be under enforcing. However, including that the land be restored to its previous condition indicates an expectation that the stables, outbuildings, vehicles and animals should also be removed from the land. The requirements therefore lack clarity, leaving the appellant unclear as to how to remedy the breach of planning control.
8. Concerns were raised with the Council regarding the wording of the Notice. The Council has sought to clarify its position. The appellant has commented on the Council's clarification.
9. While the Council's clarified position is they 'think a mixed use of residential use of caravans and a horse stable' is taking place on the land, they go on to confirm that the agricultural use, commercial operations and business existing on the land are also part of the unauthorised use attacked by the Notice. They suggest alternative wording for the allegation as follows, 'the change of use of the land to a mixed use of (i) residential occupation of caravans and (ii) as a horse stables including the construction of a stable block and an equestrian

paddock and storage on the land of items associated with the stable use including horseboxes'. This mixed use does not encompass all the uses claimed by the Council to be being carried out. It is also not clear how a 'horse stables' constitutes a use of land. This suggested wording fails to identify all the component parts of the alleged mixed use. What the appellant has done wrong therefore remains unclear. In the absence of a clear understanding of what the Notice is attacking, I could not correct the allegation with sufficient surety that injustice would not be caused to the appellant.

10. Furthermore, with the exception of the stable block, it is unclear how 'the stable block and equestrian paddock' and 'the storage of materials, vehicles and animals' are 'pieces of operational development which are part and parcel of the unauthorised horse stable use'. While a stable block is clearly operational development, there is more than one located on the land. The aerial image provided identifies five buildings as 'outbuildings and stables', but which stable block is referred to in the suggested alternative allegation is unclear.
11. The Council directs me to *Kestrel Hydro*², and that an enforcement notice alleging a material change of use can require the removal of operational development that is integral to the making of that material change of use. It is likely that *Kestrel Hydro* could be applied to the development being attacked by the Notice. The specifics of how it could be applied remain undefined however as the components of the mixed use and the extent of the facilitating operational development remain unclear.
12. Turning to the requirements, Step 1 could be varied to require the cessation of the mixed use, without causing injustice. If the extent of the facilitating features and operational developments had been identified with certainty, then Step 2 could potentially be varied to encompass the removal of those features and operational development. However, Step 2 currently only requires the removal of 'all unauthorised materials specified' in the original allegation, which infers the static caravans, stable blocks, horsebox, outbuildings, equestrian paddock, vehicles and animals can remain. Extending the requirements of Step 2 to include the removal of all the facilitating features and operational developments goes beyond what is currently required, which would cause injustice to the appellant. Similarly, introducing an additional step requiring the removal of the caravans goes beyond what is currently required, also causing injustice.
13. For the reasons given above, I conclude that the enforcement notice does not specify the alleged breach of planning control, or the steps required to be taken to remedy that breach with sufficient clarity. The Notice does not therefore tell the appellant fairly what they have done wrong, and it does not comply with s173(1)(a) of the 1990 Act as amended. It is not open to 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.
14. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (b) and (g) of the 1990 Act as amended do not fall to be considered.

M Madge

INSPECTOR

² *Kestrel Hydro v SSCLG & Spelthorne BC* [2016]EWCA Civ 784