



Appeal Decision

Site visit made on 11 August 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 August 2023

Appeal Ref: APP/M0655/C/22/3304448

107 Sankey Street, Bewsey and Whitecross, Warrington WA1 1NN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Land and Securities Limited against an enforcement notice issued by Warrington Borough Council.
- The enforcement notice was issued on 27 June 2022.
- The breach of planning control as alleged in the notice is the material change in the use of the land for the parking of vehicles with associated laying of asphalt hardstanding, fencing and gates, hooped perimeter barriers, pay and display machines and signage.
- The requirements of the notice are:
 - a) Cease the use of the land for the parking of vehicles.
 - b) Remove all fencing, hooped perimeter barriers, advertisements and supporting structures and pay and display kiosks connected with the unlawful use.
 - c) Remove all asphalt hardstanding formed since the demolition of the building connected with the unlawful use.
- The period for compliance with the requirements is:
 - a) For requirement a), one day.
 - b) For requirement b), one month.
 - c) For requirement c), two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed.

The Enforcement Notice

1. Under s183(3)-(7) of the 1990 Act the requirements of a notice should square with and follow logically from the allegation. It is within my powers to bring the steps into line with the allegation or make consequential changes to the requirements pursuant to the allegation being corrected. Any corrections or variations to the requirements may be made so long as there would be no injustice to either the appellant or local planning authority. It should not be assumed that adding to the requirements would automatically cause injustice.
2. A notice is invalid if it is defective and cannot be corrected. Powers of correction and variation are wide under s176(1) of the 1990 Act as amended. The only test is whether correction or variation would cause injustice. However, injustice may be caused if correcting the notice would mean the requirements are extended, for example.
3. The Notice targets the material change in the use of land for parking vehicles and associated operations including laying of a hardstanding, fencing and gates and other fixtures, fittings and signage associated with the use. The purpose is to remedy the breach of planning control by discontinuing the use of the land

as a car park and restoring it to its condition before the breach took place. However, some of the requirements are inconsistent with the alleged breach and therefore the Notice does not achieve that purpose.

4. There are three main areas of concern in this regard. Firstly, the allegation includes fencing and gates, but the requirements do not require the removal of gates. That appears to me to be an omission. Consequently, compliance with the requirements would leave the gates in situ which would not achieve the overall objectives of the Notice to remedy the breach of planning control. The removal of the gates cannot be achieved other than by extending the requirements which would be an injustice to the appellant.
5. Secondly, the allegation includes pay and display machines, but the requirements relate to the removal of kiosks. A kiosk is a light, open-fronted selling booth but there are no such structures on site nor is there any evidence that there were ever any kiosks forming part of the development against which the Council is enforcing. There is no requirement to remove the pay and display machines and, therefore, compliance with the requirements would leave them in situ. This may be a case of misdescription, but the requirements cannot be amended because extending them to require removal of the machines would cause injustice to the appellant.
6. Finally, the requirements with respect to the signage are a little unclear as they specify the removal of advertisements and supporting structures. The signage falls within the definition of advertisements in s336(1) of the 1990 Act (as amended) as *"any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and...includes any hoarding or similar structure used or designed, or adapted for use and anything else principally used, or designed or adapted principally for use, for the display of advertisements."* I am satisfied that the requirements would remedy the breach alleged with respect to signage associated with the use of the land for the parking of vehicles .

Conclusion

7. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the steps required for compliance with particular reference to the gates and pay and display machines. It is not open to me to correct the error in accordance with my powers under s176(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 under the various grounds as set out in s174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under s177(5) of the 1990 Act as amended do not fall to be considered.

A A Phillips

INSPECTOR