



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: 21 August 2023

Appeal Ref: APP/V0510/C/22/3295970

Open Storage Yard, 17 Oak Lane, Littleport, ELY, CB6 1RS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Oak Lane Business Park Limited against an enforcement notice issued by East Cambridgeshire District Council.
- The notice, numbered USE18/00006YARD, was issued on 24 March 2022.
- The breach of planning control as alleged in the notice is: without planning permission, the change of use of the open storage yard areas from agricultural use to a mix of uses, including business use and non-agricultural storage.
- The requirements of the notice are to: cease the use of the open storage yard for non-agricultural purposes, and permanently remove all containers, trailers, building materials and other items relating to non-agricultural use from the yard areas.
- The period for compliance with the requirements is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (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.

Decision

1. The enforcement notice is quashed.

The Notice

2. S173(2) of the Act says that an enforcement notice (EN) complies with s173(1)(a) if it *'enables any person on whom a copy of it is served to know what those matters are'*, being the matters alleged to constitute the breach. S173(3) makes clear that the EN shall specify the steps required to be taken to achieve wholly or partly any of the purposes set out in s173(4). The EN must tell the recipient fairly what they have done wrong and what they must do to remedy it.
3. The allegation in Paragraph 3 of the EN alleges a mixed use. However, it fails to identify all the components of the alleged mixed use. The notice alleges a change of use "from agricultural use to a mix of uses, including business use and non-agricultural storage". The word "including" is ambiguous because it suggests that there are more unauthorised uses than those listed. Furthermore, the term "business use" is problematic because it does not specify what the business use is, which is important, as some business uses may not require planning permission or may not be a breach of planning control, e.g., an agricultural use may be a business use. The words "non-agricultural storage" say what the storage is not, rather than what it is. The allegation should refer to all the component uses within the mixed use and it fails to do that in this case.

4. If I consider the EN is defective, I have broad powers under S176(1)(a) to make corrections. However, I can only do so where I am satisfied that this will not cause injustice to either the appellant or the Council. If the EN cannot be corrected, I must quash the notice.
5. I have considered the Council's evidence for clarification of what uses are or have been carried out on the site. However, the evidence is not very clear in describing the storage or business uses. In particular, the extent and number of uses is unclear. The Council refers to "one of the containers" and "other containers" but it is unclear how many containers there were at the date the EN was served and it does not obviously confirm all the component activities/uses. In addition, it mentions an "adjacent QA intake structure" which was "reportedly also in non-agricultural storage use". This statement is confusing as it does not identify what the storage use was or go into any detail about why it might be in non-agricultural use.
6. In addition, the Council's evidence refers to a container with a sink, kitchen and mattress inside. It states that the container also had windows, doors and that some lorry trailers had a power supply and one had a porch added to it. It is unclear from the evidence what was happening in the trailers and container.
7. I have sought clarification from the Council about the uses on the site in respect of the container/trailers. In response, the Council said that the container appeared to be equipped for residential use but that it has no evidence that residential use had taken place. I understand that this container has since been repurposed for the cultivation of mushrooms. However, this appears to have been after the EN was served. It is unclear whether the trailers and container are attacked by the EN due to the word "including" and their use not being properly described by the Council. Overall, the description of activities on the site is vague and although I undertook a site visit, this does not tell me what was occurring on the site when the EN was served.
8. In summary, the allegation is ambiguous which is compounded by the evidence not explaining what exactly was going on at the time the EN was served.
9. The requirements of the EN add to the confusion. The wording of the requirements does not follow on from the wording of the allegation. The requirements are to cease the use for "non-agricultural purposes" and to remove various items associated with that use. However, the allegation refers to business use and non-agricultural storage and not non-agricultural purposes.
10. Using land for non-agricultural purposes would not necessarily be a material change of use which is why it is important to clearly identify the alleged breach of planning control and reflect what is alleged in the phrasing of the requirements. It should not require the cessation of the use for "non-agricultural purposes". If the allegation had clearly identified the mixed use that was occurring, the requirements should have been to cease the mixed use etc.
11. In addition, S172(2) of the Act provides that a copy of the EN shall be served on the owner and occupier of the land to which it relates, and any

other person having an interest in the land, being an interest which, in the opinion of the LPA, is materially affected. It is for the LPA to decide who is materially affected, but they risk an appeal on ground (e) if they exercise their discretion wrongly. The list of who the EN was served on does not appear to include all the various operators of the businesses or those who were using the storage facilities on the site at the time the EN was served. If they had been served the EN, it might have helped to identify the uses.

Conclusion

12. For the reasons given above, I conclude that the EN does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. Furthermore, I am unable to understand what corrections might be appropriate without them resulting in injustice to any party. As such, I am unable to correct the notice in accordance with my powers under section 176(1)(a) of the 1990 Act as amended. The enforcement notice is therefore invalid and will be quashed.
13. It is open to the Council to serve a further EN which clearly sets out the nature of the breach and the requirements, should it consider it expedient to do so, subject to the provisions of section 171B(4) of the 1990 Act as amended.
14. In these circumstances, the appeal on grounds (a), (b), (c), (f) and (g) set out in section 174(2) of the Act and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

Siobhan Watson

INSPECTOR