



Appeal Decision

Site visit made on 15 November 2022

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 15 September 2023

Appeal Ref: APP/A5270/C/21/3279184

Land Rear Of 117 Brunswick Road, Ealing, London, W5 1AQ

- 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 1990 Act as amended).
 - The appeal is made by Mr Stuart Oldroyd, Bilton Land Ltd, against an enforcement notice issued by London Borough of Ealing.
 - The notice, numbered 20EN1181(2), was issued on 7 June 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land for stationing of a caravan.
 - The requirements of the notice are to: 1. Cease the use of the land for stationing of a caravan; and 2. Remove the caravan from the land.
 - The period for compliance with the requirements is: 2 months.
 - The appeal is proceeding on the ground set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The enforcement notice is quashed.

Procedural Matter

1. During the determination of the appeal, the Council informed the Planning Inspectorate that the appellant no longer owns the appeal site¹ and that the caravan which is the subject of the enforcement notice (the notice) has been removed. On this basis, the Council believes that the appellant no longer has an interest in the land sufficient to continue this appeal, and that it should be dismissed for lack of standing without determination. The appellant responded asserting that he has retained an 'equitable interest' in the property, sufficient to allow the appeal to continue.
2. Nonetheless, given my conclusion that the notice is invalid and not correctable without causing injustice, I have not pursued this matter with the parties. Additionally, I have considered the appeal on the basis of the situation when the notice was issued, at which time the caravan was located on the land in question and there was no dispute that the land was owned by the appellant.

The Enforcement Notice

3. Paragraph 3 of the notice sets out that the alleged breach of planning control is the material change of use of the land for stationing of a caravan.
4. There is no dispute between the parties that the caravan on the appeal site meets the definition of a caravan set out within section 29(1) in the Caravan Sites and Control of Development Act 1960. Additionally, the appellant confirms that the caravan is not used for residential purposes and is simply

¹ Copy of the transfer deed attached to email dated 12 September 2023.

stored on the land. From the submitted evidence and my observations on site, I have no reason to take a different view on these matters.

5. However, the Council's statement sets out that it 'accepts that the stationing of a caravan is not normally described as a use'.². Therefore, it has submitted for my consideration proposed amendments to the alleged breach and the associated requirement 1. The revised alleged breach is 'the material change of use of the land for stationing of caravan for storage purposes', and the revised associated requirement 1 is 'Cease the use of the land for stationing of a caravan for storage purposes.'
6. The power under section 176(1)(a) of the 1990 Act as amended provides that a notice may be corrected provided that no injustice would be caused by doing so.
7. The Council asserts that, in correcting the notice as proposed, there would be no injustice to the appellant because their appeal case is based on the caravan being an item stored on the appeal site and that it does not constitute a material change of use of the land. Conversely, the appellant considers that the proposed amendments constitute a fundamental change which go so far to the heart of the process that the appeal should be rejected.
8. Section 173(2) of the 1990 Act as amended states that an enforcement notice complies with section 173(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. Section 173(3) makes clear that the enforcement notice shall specify the steps required to be taken to achieve wholly or partly any of the purposes set out in section 173(4). It is settled case law that this concerns whether the enforcement notice tells the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it.
9. The stationing of caravans and other makeshift structures on encampments is normally taken as constituting a use of land. However, it is essential that an enforcement notice does not simply allege the 'stationing' of a caravan but specifies what use of land the caravan is stationed for.
10. The Council's case is based on the premise that the appeal land is now in a 'clear, single, separate, storage use' which is a material change from the previous use where it was 'functionally part of the alleyway and where any storage was limited, transient, and related to surrounding properties'.³
11. However, in considering the revised alleged breach, to my mind, it can be read in one of two ways. That the material change of use constitutes the caravan being stored on the land. This is a use for storage that would normally fall within the B8 Use Class as defined in the Town and Country Planning Use Classes Order 1987. Or, that the material change of use constitutes the caravan, which accommodates stored goods, being stationed on the land. This ambiguity in the revised alleged breach also transfers to the associated revised requirement.
12. I note the Council's comments that the precise nature of the use to which the land is now being put is secondary to the effect of that use in separating the appeal land into a different planning unit. Furthermore, that whether the

² Section 7 Statement by the Local Planning Authority.

³ Section 9.1 Statement by the Local Planning Authority.

caravan is stationed for storage or for some other purpose, a new planning unit is created.

13. However, the failure of the notice to tell the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it, means that as originally drafted or as revised, it does not meet the requirements of sections 173(2) and (3) of the 1990 Act as amended.
14. Having regard to the above, in my judgement, amending the notice as proposed by the Council would not adequately correct the ambiguity of the alleged breach and associated requirement. More importantly, if the alleged breach as originally drafted had been correctly stated and in relation to the proposed revised alleged breach, I cannot be certain that the appellant would not have appealed on other grounds and/or set out the grounds on which he did rely on differently. This is particularly relevant to ground (a) as it is the only ground of appeal which is time limited. As such, the appellant could not have sought planning permission for the revised alleged breach because he was out of time. Additionally, the appellant may also have requested a different procedure. As a result, I consider that the notice is incapable of correction without causing injustice to the appellant.
15. I have also considered whether I could amend the notice to reflect the correct description of the alleged breach of planning control that has occurred. However, I cannot be sure that in doing so I would not cause injustice to either of the parties.

Conclusion

16. 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 to comply with it.
17. 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.
18. In these circumstances, the appeal on the ground set out in section 174(2) (c) of the 1990 Act as amended does not fall to be considered.

Formal Decision

19. The enforcement notice is quashed.

F Cullen

INSPECTOR