



Appeal Decision

Site visit made on 16 January 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 February 2024

Appeal Ref: APP/E3335/C/23/3330348

**West Lambrook Farm, West Lambrook, South Petherton, Somerset
TA13 5HA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr David Batstone against an enforcement notice issued by Somerset Council.
 - The notice was issued on 21 September 2023.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised material change of use of the land from agriculture to residential by the siting of a timber clad mobile home and associated infrastructure for use as
 - independent residential accommodation, also the outside storage of domestic paraphernalia including decking and balustrade around areas of the mobile home.
 - The requirements of the notice are: (i) Cease the use of the land for any independent residential purpose; and (ii) Cease the use of the agricultural land for open storage of materials not associated with agriculture including but not limited to the barbecue, table and chairs, concrete blocks, metal scaffolding poles; and (iii) Remove from the land the timber clad mobile home and all other structures associated with the residential use of the land; and (iv) Remove from the land all paraphernalia associated with the residential use and the siting of the mobile home including but not limited to, decking, balustrades, infrastructure and utilities, pipes, plumbing and all domestic items; and
 - (v) Remove from the land all blockwork or unauthorised hardstanding and other items which have been used to facilitate the siting of the mobile home on the land, including but not limited to drainage facilities; and vi) Following compliance with (iii), (iv) and (v) above, restore the land to its former condition, prior to the unauthorised change of use taking place.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) & (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 enforcement notice

2. The enforcement notice alleges the unauthorised material change of use of land, including by the stationing and residential use of a caravan. The caravan is stationed on a hard surface in the farmyard. The plan attached to the notice shows that the notice relates to an L-shaped area including land in the farmyard around the caravan, as well as part of an agricultural field.
3. The land to which the notice relates is not fenced off, marked out or otherwise separated in any way from the field and other land in agricultural use under the appellant's control. It is thus unclear whether the majority of the land affected

by the notice is physically and functionally separate from the adjacent land in agricultural use. Generally, the land affected by an enforcement notice should reflect the relevant planning unit. Although the Council initially explained that the plan had been drawn to include the outside storage of non-agricultural materials, as there is no reference to such activity in the allegation that does not assist in clarifying the matter. Since the sole use of the field appears to be for agriculture, it is unclear how or why part of that field has an association with the residential use alleged in the notice.

4. A subsequent problem which arises is that since the land in agricultural use forms a significant portion of the land within the red line on the notice plan, the allegation should correctly refer to the material change of use to a mixed use which includes agriculture. When, as in this instance, a material change to a mixed use is being enforced against, all the components of that use are required to be specified in the allegation, even if it is considered expedient that only one component should cease. The Courts have confirmed that where a site is in a single mixed use, it is not open to the Council to decouple elements of it. The use of that site is the single mixed use with all its component activities¹. Consequently, the breach of planning control alleged in the notice is incorrect.
5. There are other problems with the notice. The allegation also refers to the storage of domestic paraphernalia including decking and a balustrade. However, where, as in this case, the allegation is one of the stationing and residential use of a caravan, the presence of such items would normally be regarded as incidences of the residential use. In relation to the requirements, at step (ii) the notice requires a use for *'open storage of materials not associated with agriculture including but not limited to the barbecue, table and chairs, concrete blocks and metal scaffolding poles'* to cease. Such a use does not form part of the matters described in the allegation. Moreover, what step (ii) requires is excessive for the purpose of remedying any alleged breach of planning control of that nature as it could ostensibly prohibit other lawful uses, or as yet unsubstantiated future breaches of planning control.
6. After seeking the views of the main parties, I have considered whether I can exercise the power available in s176 (1)(a) of the Act to correct any defect, error or misdescription in the notice. The power is wide and subject only to the test of injustice. In my view, the notice could be corrected to refer to a mixed use which includes reference to agriculture in the allegation without causing injustice to the appellant, since the agricultural activity would not be affected by the notice requirements. The notice could also be corrected to make it clear that the domestic paraphernalia, decking and balustrade are incidences of the residential component of the mixed use. There would be no injustice, as step (iv) of the notice requires the removal of such items in any event. Similarly, there would be no injustice to the appellant if step (ii) were to be deleted, with a consequential renumbering of the subsequent steps.
7. Be that as it may, substituting the plan attached to the notice with one which identified the breach as occurring over a greater area of land, for example by including the rest of the farmyard, the rest of the field and adjoining fields as the Council proposed, would lead to the appellant being in a worse off position than had they not made an appeal in the first place and simply complied with

¹ *R (oao) East Sussex CC v SSCLG & Robins & Robins* [2009] EWHC 3841 (Admin).

the notice. This could include by moving the caravan onto other land under the appellant's control. It may also lead to the appellant being denied an opportunity to appeal on other grounds available compared to if the notice had been issued with a more accurate plan. There is little to indicate that the caravan could not be moved with relative ease, should the need arise. Neither the cladding, decking or the balustrade significantly affect the ease of moving the caravan. On the other hand, reducing the area of the affected land to a smaller area around the caravan would put the Council in a worse position than in the notice as issued, as the appellant would then be able to defeat the effect of the notice simply by moving the caravan a short distance from its current location. Therefore, correcting the notice by substituting a modified plan would in all likelihood cause injustice to either the appellant or the Council.

8. Furthermore, correcting the notice by also adding reference in the allegation to a use for the storage of materials not associated with agriculture would potentially widen the scope of the notice, also denying the appellant the opportunity to appeal on other grounds and so would cause them injustice. In any event, since the nature and scale of any alleged storage use is unclear, such a correction would be in uncertain terms.
9. Accordingly, the notice is incapable of correction as to do so would cause injustice, either to the appellant or to the Council. It is open to the Council to issue a fresh notice, in the event it is considered expedient to do so, with a corrected allegation, corresponding steps and with a more accurate plan attached reflecting the findings set out above. In such an eventuality, the Council may also wish to reflect carefully on the reasonableness of the specified period for compliance. In this respect, it is salient that a consequence of the notice being upheld would potentially be the loss of what is currently a family home whilst the farmhouse is undergoing refurbishment and uninhabitable.

Conclusion

10. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance and the land where the breach of planning control is alleged to have taken place. It is not open to me to correct the errors 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. In these circumstances the appeal under grounds (a) and (g) as set out in section 174 (2) of the 1990 Act as amended and the application deemed to have been made under section 177 (5) of the 1990 Act as amended do not fall to be considered.

Stephen Hawkins

INSPECTOR