



Appeal Decisions

Hearing held on 5 March 2024

Site visit made on 6 March 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH APRIL 2024

Appeal A Ref: APP/L1765/C/22/3306531

Appeal B Ref: APP/L1765/C/22/3306532

Land at Southfield Nursery also known as S & D Nurseries, Dradfield Lane, Soberton, Southampton, Hampshire SO32 3QD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Kevin Hall and Appeal B is made by Ms Claire Slater against an enforcement notice issued by Winchester City Council.
- The notice was issued on 26 August 2022.
- The breach of planning control as alleged in the notice is without planning permission, the breach of condition 1 of the planning permission granted on appeal on 11 March 2014 under Council reference 13/01686/FUL (appeal reference APP/L1765/A/13/2207540) for the continued use of land to station a mobile home for a horticultural worker for a further three years ("the Planning Permission"). Condition 1 states:
"The mobile home hereby permitted shall be removed and the land restored to its former condition on or before the expiry of three years from the date of this decision in accordance with a scheme of works submitted to and approved by the Local Planning authority."
This condition has not been complied with in that the mobile home remains stationed on the land and is occupied for residential purposes and the land has not been restored to its former condition.
- The requirements of the notice are to:
 - i) Cease the use of the Land for stationing a residential caravan/mobile home;
 - ii) Remove from the Land the caravan/mobile home (shown in the approximate location marked "X" on the attached plan), the hard surfacing, outbuildings, storage containers and all paraphernalia brought onto the Land to facilitate the residential use;
 - iii) Reseed the Land to grass.
- The period for compliance with the requirements is: Nine (9) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) 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.

Summary Decision: The enforcement notice is quashed.

Application for Costs

1. An application for costs was made by Winchester City Council against Mr Kevin Hall and Ms Claire Slater. This application is the subject of a separate decision.

Procedural Matters

2. The appellant and his agent stated that Ms Claire Slater (appellant for Appeal B) was absent due to illness. However, the two parties were satisfied that the

hearing could be conducted in her absence. I had no reason to disagree with this and carried out the hearing without Ms Slater being present.

3. The appellants raised concerns over the attendance of two Council Officers who were not the investigating Enforcement Officer nor the author of the Statement of Case. I note the appellants' concerns and the benefits of having the officer present. However, there is no rule set out in the Town and Country Planning (Hearings Procedure) (England) Rules 2000 that the persons to appear for the local planning authority must be the investigating Enforcement Officer or the author of the written submissions.

Matters Concerning the Enforcement Notice

4. The appellant considers that the enforcement notice is invalid and cannot be corrected. This is a matter that does not fall to be considered neatly within any of the grounds of appeal available to an appellant under section 174(2) of The Town and Country Planning Act 1990 as amended (1990 Act). It is therefore necessary to consider it separately here.
5. Section 173 of the 1990 Act sets out the contents and effect of an enforcement notice and is relevant to the matter of nullity and invalidity. Section 173(3) of the 1990 Act sets out that an enforcement notice shall specify the steps which the local planning authority require to be taken, or the activities which the authority require to cease, to achieve, wholly or partly, any of the following purposes; (4)(a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach.
6. The purpose of the enforcement notice is to remedy the breach of a condition, which is attached to a temporary planning permission for a mobile home to be sited on the land in connection with a horticultural enterprise. The Notice has been issued in respect of paragraph (b) of Section 171A (1) of the 1990 Act, which refers to a failure to comply with a condition attached to the planning permission granted.
7. The three-year temporary period imposed by condition 1 of the planning permission has lapsed, and the Enforcement Notice (Notice) requires the use of the Land for the stationing of a residential mobile home to cease and the residential caravan/mobile home to be removed. It also requires hard surfacing, outbuildings, storage containers and all paraphernalia brought onto the Land to facilitate the residential use to be removed and the Land reseeded to grass. The purpose of the Notice is, therefore, to remedy the breach in line with section 173 (4)(a) of the 1990 Act.
8. As part of the ground (a) appeal, the appellant claims the mobile home is currently stationed on the Land in connection with an equestrian enterprise rather than horticulture. As the Notice only refers to the breach of a condition attached to a planning permission granting the use of the land for horticulture, I would only be able to permit the retention of the mobile home in connection with the horticultural use. As the appellant is not seeking the retention of the mobile home in connection with horticulture, the allegation would need to be changed to refer to the equestrian use set out in the ground (a) appeal. Section

176(1) of the 1990 Act provides for the correction of any defect, error or misdescription in the enforcement notice, providing it would not cause injustice to the appellant or local planning authority, or if there would be such prejudice in respect of an interested party as to cause a loss of natural justice.

9. During the hearing, the correction of the allegation to allege the material change of use of the Land was discussed. Based on the evidence presented to me, the appellants have been occupying the site for several years. During their occupation the horticultural use was no longer conducted, instead the Land has been used for agriculture, commercial equestrian activities and residential purposes by the siting of the mobile home. Although the scale of the equestrian activities was disputed, the two parties agreed that the Land subject of the Notice is occupied by the appellants and is being used for a mixed-use comprising of agriculture, commercial equestrian activities and the siting of a mobile home for permanent residential purposes.
10. In addition to the mixed-use, the appellants have extended the stables on the Land and converted it, in part, to a studio flat, occupied by Mr Kevin Hall's son. The appellants have also erected buildings as well as included an additional storage container to facilitate the mixed-use. The Council agreed that there were several buildings and a container on site facilitating the mixed-use, which were not affected by the current requirements of the Notice. Although the studio flat was on the Land, accessed via the single access point and occupied by the appellant's son, the Council considered it to be a separate planning unit.
11. The Council did not object to the allegation being corrected before the hearing took place. However, at the hearing, the Council Officer indicated that she was not aware of a letter sent on 11 January 2024 outlining this to be the case. Notwithstanding this, following a discussion at the hearing, the Council expressed concerns over the corrections, due to the significant change in the nature of the allegation to allow consideration of the ground (a) appeal. The appellants also had significant concerns over the corrected allegation and requirements, which would have included several buildings and a storage container not previously included in the Notice. As they did not have the opportunity to appeal the removal of these items, they claimed this would cause injustice to the appellant.
12. In my judgement, correction of the allegation to set out a material change of use to the mixed-use set out above would fundamentally change the nature of the allegation. This has the potential to cause injustice to both appeal parties. For instance, widening the scope of the allegation and requirements to include the mixed use, as well as those buildings and storage container that facilitate the mixed use, would cause injustice to the appellant by making the Notice more onerous. In addition, I cannot discount the possibility that the appellants would have appealed on other grounds, particularly grounds (a) and (d) if the allegation were corrected in this manner. Furthermore, if I widened the allegation to set out the mixed use but did not expand the requirements to include the buildings and storage container, this would cause injustice to the Council by giving rise to the prospect of permission being granted via section 173(11) of the 1990 Act for those structures.
13. There is also a potential loss of natural justice to an interested party, which in this case would be the appellant's son, who occupies the studio flat on the Land.

Even if the studio flat is a separate planning unit, he would have an interest in the Land and could be affected by the requirements of the corrected Notice to allege a mixed-use. He was not present at the hearing and would not have the opportunity to appeal the corrected Notice, which could have serious implications to the studio flat he occupies as his home.

14. In light of the above, I am unable to correct the allegation to set out the mixed use being carried out on site, and it is necessary to consider the validity of the allegation and requirements of the Notice, which seeks to remedy the breach of condition.
15. The appellants raised concerns in the written submissions and at the hearing regarding step (ii) of the requirements, which outlines that hard surfacing, outbuildings, storage containers and all other paraphernalia facilitating the residential use should be removed. The appellants set out that, apart from the mobile home, the additional items are not included in the allegation nor are they identified by adequate description or on a labelled plan. I agree that by not identifying the location of the items on a labelled plan or by adequate description, the Notice fails to tell the recipient with certainty what must be done to remedy the breach alleged. In this respect, the Notice is defective and would need to be varied.
16. I have considered whether I can vary the terms of the Notice using the power under section 176(1)(a) of the 1990 Act, to delete references to the items, other than the mobile home, set out in step (ii) of the requirements. The Council did not object to this variation, even though it would delete items that they initially considered had to be removed to comply with the breach of condition. In contrast, despite the requirements of the Notice being less onerous, the appellants were concerned that if the Notice were upheld with this variation, the ground (a) appeal would not be heard.
17. Although the varied requirements of the Notice would be less onerous, I am conscious that condition 1 of the temporary permission not only requires the mobile home to be removed but also requires the Land subject of the permission to be restored to its former condition. In respect of the former condition of the land, I have had regard to the planning history, and the supporting evidence with the 2014 appeal. The land subject of the permission relates to the whole of the planning unit occupied by the appellants and matches the plan attached to the Notice. The submissions set out that the site subject of the permission was used for horticulture. The site included a glasshouse, a storage container, a stable block along the eastern boundary and a ménage. An agricultural building and an extension to the glasshouse had been granted planning permission but had not been implemented at that time.
18. Compliance with condition 1 requires the restoration of the Land to its former condition. The buildings and structures remaining on the Land following compliance should only include those set out in the paragraph above. Although the mobile home would be removed as part of the requirements, several unauthorised buildings and a storage container that facilitate the current mixed-use on the site would remain. Accordingly, despite being less onerous to the appellant, the varied requirements would not remedy the breach of planning control by failing to restore the Land to its former condition. For completeness, if I were to widen the requirements to include the additional buildings and a

storage container brought onto the land to facilitate the mixed-use, the requirements would be more onerous, causing injustice to the appellant.

19. I also had regard to the Council's suggestion of substituting a corrected plan, so that the area affected by the Notice is reduced to that occupied by the mobile home. However, like varying the wording of the requirements, correcting the plan in this manner would only require the mobile home to be moved and the land beneath it to be restored to its former condition, and not the whole of the land subject to the planning permission. The mobile home could also be moved elsewhere on the land. As such, correcting the plan would also fail to remedy the breach of planning control, which is the purpose of the Notice.

Conclusion

20. For the reasons given above I conclude that the Notice does not specify with sufficient clarity the steps required for compliance. It is not open to me to correct any defect, error or misdescription, or vary the terms of the enforcement notice 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.
21. In these circumstances the appeals under grounds (a), (f) and (g) as set out in section 174(2) of the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Formal Decisions

22. The enforcement notice is quashed.

M. P. Howell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Richard Stone	Agent for Appellant (Stone Planning)
Mr Kevin Hall	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Rose Chapman	Principal Planning Officer, Winchester City Council
Madelaine Clavey	Principal Enforcement Officer, Winchester City Council

DOCUMENTS SUBMITTED AT THE HEARING:

- Updated Plan of the site with annotations on buildings and use
- Decision Notice and site location plan for Council reference 2006/02642/FUL
- Nutrient Neutrality mitigation strategy document
- Additional annotated plan identifying the different residential, equestrian and agricultural uses of buildings on site.