



Appeal Decision

Site visit made on 16 May 2024

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2024

Appeal Ref: APP/B3030/C/23/3316484

Land adjoining The Hermitage, Gonalston Lane, Gonalston, Nottingham NG14 7LL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mrs Sophie Fish against an enforcement notice issued by Newark and Sherwood District Council.
 - The notice was issued on 13 January 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, 'development' consisting of the material change of use of land from agricultural use to residential use (as shown within photographs 1 & 2), including operational development consisting of the erection of a timber fence to enclose the land.
 - The requirements of the notice are:
 - A. Remove the fencing (marked by a red dashed lined on Plan A).
 - B. Cease the existing residential use of the land and return to agricultural use.
 - The periods for compliance with the requirements are:
 - A. 60 days after the notice takes effect;
 - B. 70 days after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (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.
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Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. Before I can consider the various grounds of appeal, it is necessary to consider the notice.
3. The allegation in the notice is the material change of use of land from agricultural use to residential use, including operational development consisting of the erection of a timber fence to enclose the land.
4. Since the notice was issued, there has been dialogue between the appellant's advisors and the Council. A statement of common ground has been produced. This states:

A track has been regularly used by residents of The Hermitage for access and maintenance purposes.

To assist this, there is a gate into the rear of the property separate to the field gate at the northwestern end of the track. This gate was in place at the time that Mr and Mrs Fish purchased the site during 2000, and has remained in

place to date (with a minor adjustment following the purchase of the adjoining track so as not to impinge upon the point that the footpath enters the adjoining field by way of a stile). A new gate was provided onto Gonalston Lane at the time that the post and rail fence was erected.

In the balance of probability a track south of The Hermitage has been used by its residents on a continuous basis for more than ten years for access and maintenance purposes.

However, it has been agreed that whilst used to assist with access to and maintenance of the curtilage for more than 28 days of the year, the track has been used purely for these purposes. There is, therefore, a functional difference in the use of the track compared to that of the residential curtilage.

5. A statutory declaration by Mr Charles Fish indicates that the land has been used as an access to serve the property since the purchase of the property in 2000. This is not challenged by the Council.
6. From this, it is clear that the allegation in the enforcement notice is wrong. In particular:
 - i) The land has been used as an access and not for residential use, as alleged in the enforcement notice; and
 - ii) On the balance of probability, it had been in such use for more than 10 years prior to the issuing of the enforcement notice.
7. Since the use alleged in the notice is wrong, it cannot stand as it is. In accordance with s176(1)(a) of the Act I am able to correct any defect, error or misdescription in the enforcement notice, provided that doing so will not cause injustice to the appellant or the local planning authority. However, there is an appeal on ground (d), which is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control. Since it is clear that the actual use of the land had continued for more than 10 years at the point when the notice was issued, any corrected allegation could not survive the ground (d) appeal, since such use, if it required planning permission in the first instance, would have become lawful after a continuous 10-year period¹. Even if there were no ground (d) appeal, I could not 'correct' the notice to refer to a use which was lawful at the time the notice was issued.
8. The allegation also includes the fence. However, it is common ground that this had been in place for more than 4 years when the notice was issued. Consequently, this was also immune from enforcement action when the notice was issued². The ground (d) appeal would, therefore, succeed in respect of the fence as well.
9. Given the above, even if I were to correct the notice to refer to the actual change of use that had occurred, the appeal would succeed and the notice would be quashed. In these circumstances, I will quash the notice without seeking to correct it.

¹ In accordance with section 171B(3) of the Act

² Section 171B(1) of the Act now specifies a period of 10 years where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations. However, that time period has only recently been introduced by The Levelling-up and Regeneration Act 2023. At the time the enforcement notice was issued, the relevant period was 4 years.

Other matters

10. I have had regard to the suggestion put forward by both parties that the requirements of the notice could be modified or planning permission granted, subject to conditions. It reflects well on both parties that they have worked together to try to reach a solution on the matter. Nevertheless, for the reasons I have given the notice should be quashed. It follows from this that the deemed planning application arising from the appeal on ground (a) does not fall to be considered and it is not open to me to grant any planning permission.

Conclusion

11. For the reasons given above, I conclude that the enforcement notice does not specify an appropriate breach of planning control. Consequently, the enforcement notice is invalid and will be quashed. In these circumstances, the various grounds of appeal do not fall to be considered.

Peter Willows

INSPECTOR