



Appeal Decision

Site visit made on 2 July 2024

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2024

Appeal Ref: APP/D0515/C/23/3329398

Land at Elm Farm, Hospital Road, Doddington, Cambridgeshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Scott Miller against an enforcement notice issued by Fenland District Council ("the LPA").
 - The notice was issued on 11 August 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the site for the stationing of a caravan for residential purposes and the storage of containers on the land.
 - The requirements of the notice are:
 - i) Cease using the land for residential purposes.
 - ii) Cease using the land for the stationing of caravans by removing all caravans from the land.
 - iii) Remove all residential paraphernalia from the land including gas bottles.
 - iv) Remove the storage containers from the land.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Reasons

2. I am required to ensure the Notice is in order, considering Section 173 of the Town & Country Planning Act 1990 which, among other things, requires an enforcement notice to state the matters which appear to the LPA to constitute the breach of planning control. A notice complies with that requirement if it enables any person on whom it is served to know what those matters are.
3. Section 3 of the Notice describes the breach of planning control as "Without planning permission, the change of use of the site for the stationing of a caravan for residential purposes and the storage of containers on the land." But it was apparent at my site visit, and from the Council's statement, that another primary use had also occurred on the Land, of which the Notice made no reference.
4. The Land appears to comprise a single planning unit, and neither party have suggested otherwise. The notice alleges that there has been a material change of use to a mixed use, that being more than one primary use existing within the same planning unit where neither is ancillary to the other. The mixed use alleged in the notice is one of residential use and use for the storage of

containers. However, the appellant and the Council agree that the repair and maintenance of agricultural machinery, plant, and vehicles had also occurred on the Land at the time the notice was issued ("the repair and maintenance use").

5. With the information before me, the repair and maintenance use comprises the use of the buildings and external areas of the Land, including the containers, and is a primary use of the Land. Although the caravan in residential use is occupied by the operator of the repair and maintenance use, it is a home for his family, and residential use is therefore also a primary use of the Land, rather than one incidental or ancillary to the repair and maintenance use.
6. There is no defined residential curtilage or garden area, or any other physical division of the Land into separable areas for the principal uses. From the evidence before me, the repair and maintenance use is a primary use and is not ancillary or incidental either to the residential use or storage uses which form part of the alleged breach, or indeed to the agricultural use on the wider parcel of land which falls outside that subject to the notice.
7. The alleged breach therefore omits a component of the mixed use which had occurred at the time the notice was issued. In such cases, the allegation should refer to all components of the mixed use. Case law has held that it is not open to the Council to decouple elements of a mixed use, as the use is a single mixed use with all its component activities.
8. Moreover, the parties agree that the containers referred to in the notice are used for storage in association with the repair and maintenance use, as opposed to the Land being used to store containers. The use of the Land for the storage of containers has therefore not occurred.
9. It is therefore necessary to correct the notice in order to rectify the defects within the breach. However, I am only able to do so if it does not result in injustice to the appellant or the Council.
10. Were I to correct the breach of planning control to include use for the repair and maintenance of agricultural machinery, plant and vehicles within the mixed use then injustice would occur to the appellant. In that case he would have been denied the opportunity to make his case in that respect in relation to his appeal on ground (a), and the opportunity to make any case he may wish to have made on any other grounds in relation to that aspect of the use.
11. In addition, such a correction would necessitate a variation of the requirements of the Notice to ensure the cessation of the use for the repair and maintenance of agricultural machinery, plant and vehicles. That would cause further injustice to the appellant, by making the requirements of the Notice more onerous and denying him the ability to make his case in relation to the variation.
12. Furthermore, were I to correct the breach but not vary the requirements, unconditional planning permission would be granted for the repair and maintenance use under Section 173(11) of the Act, causing injustice to the Council.
13. The Notice is therefore invalid, as it cannot be corrected or varied without injustice to the Council or the appellant.

Conclusion

14. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control.
15. 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.
16. In these circumstances, the appeal on the ground set out in section 174(2)(a) 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) does not fall to be considered.

Peter White

INSPECTOR