

Appeal Decision

Hearing held on 28 August 2024

Site visit made on 28 August 2024

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2024

Appeal Ref: APP/J1535/C/23/3317791

Land at Greenacres, Bassetts Lane, Willingale, Ongar, Essex CM5 0QL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr William Lowe against an enforcement notice issued by Epping Forest District Council.
 - The notice, reference ENF/0224/22 was issued on 1 February 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land to a residential caravan site.
 - The requirements of the notice are to:
 - i. Cease the use of the land as a residential caravan site.
 - ii. Remove from the land all caravans.
 - iii. Remove from the land all motor vehicles, garden furniture, pallets, bins, gas bottles, children's play equipment and any other items associated with the unauthorised residential use of the land.
 - iv. Break-up and/or scrape clear the hard surface and remove from the land all material resulting from the works.
 - v. Demolish the boundary fencing enclosing the land.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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.
-

DECISION

1. The appeal is allowed and the enforcement notice is quashed.

PRELIMINARY MATTERS

2. At the hearing into this appeal discussion also took place on an appeal against an enforcement notice concerning land to the south under the same land ownership (appeal reference APP/J1535/C/22/3301682). The matters for consideration and the cases presented by the appellants and the Council were similar in both appeals. Nevertheless, each enforcement notice and appeal are considered on their own merits and a separate Decision will be issued for each appeal.

3. The appellant confirmed in their statement of case that the appeal made on ground (e), regarding the service of the notice, was no longer being pursued.

REASONS

Planning History

4. The land known as Greenacres extends along the eastern side of Bassetts Lane, extending further eastward towards the northern end (the Greenacres site). The land has for many years been owned and occupied by the Lowe family and is around 2.66 hectares (ha) in area. The planning history is important background to the current appeal, which relates to a parcel of land on the northern part of the Greenacres site.
5. The planning history dating back to 1996 was considered at some length at a planning inquiry held in 2016 (where I was the Inspector), as set out in the Decision document dated 13 June 2017 (the DL). Two decisions were issued.
6. The first decision quashed an enforcement notice and substituted a new condition 2 on the original planning permission granted in 1996. Planning permission also was granted on the deemed planning application for the stationing of a residential home without complying with condition 2 attached to planning permission ref EPF/50/96 dated 18 November 1996, subject to the other conditions attached to that permission. A new condition was imposed that made the permission personal to William Lowe senior and also limited occupation to William Lowe senior and specified members of his family.
7. The second decision (appeal ref APP/J1535/A/14/2225844) granted planning permission for a material change of use to a mixed use for purposes of agriculture and a residential caravan site, subject to 6 conditions. The permission related to the area of 2.66 ha and, in summary, the conditions control occupation, number of pitches and required a site development scheme. The DL explains the reasoning behind the description of the development granted permission, which took account of the 1996 permission and the provisions and case law on sections 73 and 73A of the Act. I concluded the application (ref EPF/0657/14) and related appeal should be considered as seeking permission for development carried out without planning permission under section 73A (not section 73 as the appellant argued) and that to do so would not cause injustice given the evidence and submissions made at the inquiry.
8. The grant of a permission for a mixed use amounted to a new stage in the planning history of the site and conditions were attached accordingly. The 2017 permission now regulates the use and development of the land. On 5 October 2017 the Council approved a site development scheme, submitted in compliance with condition 6. The statement of common ground for the current appeal confirms the Council and the appellant agree the lawful use of the Greenacres site is a mixed use for purposes of agriculture and a residential caravan site.
9. Over the period April 2020 to October 2022, attention was focused on the southern part of the Greenacres site by way of planning applications, enforcement notices and appeals. The evidence indicates development took

place on the northern part of the Greenacres site towards the end of 2021.
The enforcement notice under consideration was issued on 1 February 2023.

The Enforcement Notice

10. The appellant submits the enforcement notice is a nullity or, if that primary case is not accepted, the notice is invalid. Reliance is placed on the provisions of section 57(4) of the Act and the uncertainty resulting from the failure of the notice to identify the hardstanding and fencing required to be removed.
11. An enforcement notice is a nullity if a defect is evident on the face of the document and it is missing a vital element derived from the statutory requirements set out in section 173 of the Act. In effect there is no notice at all and therefore nothing that can be corrected or form the basis of an appeal. An appropriate test, derived from the *Miller-Mead* judgement¹, is whether the notice tells the recipient fairly what he has done wrong and what he must do to remedy it. Additional principles have emerged through case law. A consideration of whether a defect renders the notice is a nullity must be viewed in context. Of relevance is the importance or otherwise of that part of the notice which contains the defect, whether or not it is inextricably bound up with the remainder of the relevant section of the notice and whether the notice would otherwise be valid in its absence. In considering nullity, the approach should not be unduly technical or formalistic.
12. An enforcement notice may be flawed in some way, and is invalid, but yet not so defective as to be a nullity. On an appeal under section 174 any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1), or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
13. Turning to the matters raised by the appellant, section 57(4) provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out. This provision does not inform whether the notice is a nullity. It may be relevant to the expediency of issuing the notice but that is a separate matter which is not for my determination.
14. In the notice, the alleged breach of planning control describes the material change of use and makes no reference to associated works enabling that change. Removal of the hard surface and boundary fencing enclosing the land are two of the requirements. Neither the extent of the hard surface or the fencing is indicated on the plan attached to the notice. Such an omission or defect is not fatal to the meaning of the requirements or the notice.
15. When the notice is read as a whole it is clear the purpose of the notice is to remedy the breach of planning control and to restore the land to its condition before the unauthorised development took place. The requirements are specified to achieve the purpose. A reasonable expectation is that the

¹ *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196

recipient of the notice would have knowledge of the condition of the land that existed before facilitating works were carried out.

16. It was open to the recipient to appeal on ground (f) if they considered the requirements are excessive, as they have done. The Council, in responding to the appellant's ground (f) appeal, submitted a plan to clarify the fencing and area of hardstanding to be removed.

17. I conclude the enforcement notice is not a nullity and it is not invalid.

Appeal on grounds (b) and (c)

18. These grounds of appeal will be considered together because they raise interrelated matters.

19. The issues are:

- whether the matters stated in the alleged breach of planning control have occurred as a matter of fact, namely the creation of a residential caravan site, and
- if so, whether the caravan site constitutes the breach of planning control described in the notice, namely a material change in the use of the land.

The assessment is informed by the planning history and the authorised use of the Greenacres site as a mixed use for purposes of agriculture and a residential caravan site. The relevant date is February 2023, the time when the notice was issued.

20. Evidence on the baseline position is provided by an aerial photograph dated 2017 submitted by the Council and by plans submitted by the appellant's family to gain approval for the site development scheme required by condition 6 of the 2017 permission. The developed area, with the two pitches, caravans and amenity space, was focused around the old barn and stable block and formed a compact area served by a single access off Bassetts Lane. The surrounding land within the Greenacres site was grassland, with the appearance of grazing land.

21. The appellant accepted a mobile home was stationed on the appeal site in 2021 for occupation by his grandfather. The appellant and his family moved into the mobile home after his grandfather passed away in November 2021. The aerial photograph submitted by the Council dated March 2022 shows that a new access had been formed and hard surfacing laid to access the appeal site and also to access pitch 2 on the original site. The static caravan is visible on the appeal site together with additional hard surfaced areas, small items on the nearby agricultural land and a length of fencing extending east-west. A second photograph submitted by the Council dated November 2022 shows the new access and a double gateway, a hard surfaced track, an additional mobile home, fencing and hard surfacing. The adjacent gateway leads to the pitch occupied by Mr and Mrs Scamp and their family, reflecting changes to the approved site layout on the original caravan site.

22. As a matter of fact a new 'caravan site' as statutorily defined² was created by the time the notice was issued on 1 February 2023.

23. The main area of dispute between the principal parties centres on whether the Greenacres site was subdivided to create a new separate and distinct planning unit occupied by the appellant's caravan site. A conclusion on the planning unit informs whether the alleged breach of planning control is correctly described as a material change of use, as opposed to a breach of planning condition(s).

Planning unit

24. The concept of the planning unit is a means of determining the most appropriate physical area against which to assess the materiality of change. The broad tests for determining the appropriate planning unit are set out in the *Burdle* judgement³. There may be a single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary. Secondly, a planning unit in a composite or mixed use is where the occupier carries on a variety of activities in the unit of occupation and it is not possible to say that one is incidental or ancillary to the other. The component activities fluctuate in their intensity from time to time but the different activities are not confined within physically and distinct units of land. Thirdly, it also may occur that within the single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose, together with its incidental activities, ought to be considered as a separate planning unit.

25. The assessment is a matter of fact and degree. As a working rule it may be assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally. However, the courts have recognised that a smaller or larger area may be taken as the planning unit.

26. The appeal site is the unit of occupation by the appellant and his family, although the land remains within the ownership of his father. A new gated means of access was formed and close boarded fencing erected to give a degree of physical separation from the land to the south. Nevertheless, the ability for easy circulation and movement between the two adjacent areas of land was maintained, as confirmed on the appeal site visit. A low post and wire type of fencing along the eastern boundary probably has not provided a high level of permanence of enclosure. According to the appellant the areas of enclosed grazing have changed. There was a high degree of intervisibility between the appeal site and the land to the east and to the south. Physical separation was and continues to be weak.

27. The appeal site appeared from the photographic evidence to be in use as a caravan site and agriculture in the early period of occupation. At the time of the appeal site visit, the residential use and character was dominant with the

² A caravan site is defined under s1(4) of the Caravan Sites and Control of Development Act 1960 as land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed.

³ *Burdle v Secretary of State for the Environment* [1972] 3 All ER 240

expansion of the amenity space across most of the site. A small pen housed two pigs and a second pen housed hens and a goat. There is not the evidence to conclude whether the keeping of these animals falls within the agricultural component of a mixed use or are more appropriately considered ancillary to the residential use. The appellant's photo of March 2023 indicates a well used amenity space at that time. However, these observations must be considered in the context of the lawful mixed use and the fluidity between the various areas of land, at least on the northern half of the Greenacres land.

28. The appellant emphasised they live very much as an extended family and use the entirety of the Greenacres land. The appellant's partner helps to look after his mother and everyone looks out for the children. They use the utility and washroom facilities near his father's mobile home and they pipe water and source electricity from his supply. The animals are not restricted to one area of the land and are tended by all. Animal feed is kept in the stable block. The evidence and appearance are of a strong functional relationship between the use and activity on the appeal site and the adjacent lands, facilitated by the physical layout and relationship.

29. In conclusion, the appeal site has not become a physically distinct and separate area that is occupied for substantially different and unrelated purposes to the Greenacres site. A new planning unit has not been created. The breach of planning control does not amount to a material change of use to a residential caravan site.

The Alternative

30. The mixed use granted permission in 2017 extends across the whole of the Greenacres site. The control on the extent of the caravan site component is exerted through the planning conditions.

31. The Council's report to authorise the issue of the enforcement notice stated that agriculture was the lawful use of the appeal site, not the mixed use granted in 2017. The description of the alleged breach of planning control in the notice in this appeal was informed by an incorrect starting point. In the report no consideration was given to the possibility of the development being a breach of condition(s) attached to the 2017 permission, or whether the identified change in use would be a material change when assessed against the lawful mixed use of the whole.

32. The appellant indicated the development may be in breach of conditions of the 2017 permission. However, that is not for determination through this appeal. It is not open to me to correct the wording of the description of the alleged breach of planning control, which would basically be a re-write of the enforcement notice. Injustice would be caused to the appellant and the Council because they have presented their respective cases on the alleged material change of use of the land. Furthermore, due process would not be followed because the expediency of issuing such a notice has not been considered by the local planning authority.

Conclusion

33. For the reasons given above, I conclude that the appeal should succeed on grounds (b) and (c). The enforcement notice will be quashed.

34. In these circumstances, the appeal on grounds (a), (f) and (g) 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.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Matthew Green

Director, Green Planning Studio Ltd

William Lowe

The Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Emily Temple BSc(Hons) MSc MRTPI

Director, ET Planning Ltd.

INTERESTED PARTIES:

P Davies

Resident

Willingale Parish Council

DOCUMENTS submitted at the hearing

Signed witness statement of William Lowe

Statement of common ground.