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## Appeal Decision

Hearing held on 8 October 2024

Site visit made on 8 October 2024

**by P N Jarratt BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 October 2024**

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**Appeal Ref: APP/E3335/C/23/3333243**

**Building on land west of Winters Hill Lane, West Compton, BA4 4PA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Tony Harvey against an enforcement notice issued by Somerset Council.
  - The notice was issued on 12 October 2023.
  - The breach of planning control as alleged in the notice is without planning permission and within the last four years operational development consisting of:
    - i) The erection of a steel framed and glass/cement board clad building (photograph attached to the notice);
    - ii) Associated ground works to create hardstanding,
    - iii) Erection of a wooden stable building (foreground in photograph attached to the notice).
  - The requirements of the notice are:
    - (i) Demolish the building including excavating and removing all foundations. Remove the resulting debris permanently from the land.
    - (ii) Remove all the areas of hardstanding from the land. Remove the resulting debris permanently from the land.
    - (iii) Restore the land to its immediate condition prior to the unauthorised operational development being commenced.
  - The period for compliance with the requirement is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (f) 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. Since the notice is found to be a nullity, no further action will be taken in connection with the appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under s188 of the Act as amended.

### Reasons

2. There are deficiencies in the enforcement notice relating to the allegation, the requirements, the reasons for issuing the notice and the plan.
3. The notice indicates that the land to which the notice relates is land to the west of Winter's Hill Lane, West Compton, and edged in red on the plan. It reflects the red line area on the Acorus location/block plan 200-01A accompanying refused application 2022/2348/FUL. This is an irregularly shaped area showing the siting of the steel-framed building and vehicular access. Excluded from the site but adjacent to it is shown a small rectangular un-annotated area, thought

to be a shed or stable building. The proposed site plan accompanying the application (drawing 200\_03) illustrates the siting of the steel-framed building, two adjacent areas of hardstanding and an enlarged stable building.

4. The area subject to the notice does not reflect what has occurred and what is currently visible on the site. In particular, the red line excludes what may have been a modest 2/3 horse stable building at one time but excludes part of the area occupied by the extension to the side and rear of this building to create a four horse stable with tack room, etc and an extended hardstanding to the north of the stable building.
5. It only became apparent at the site inspection following the hearing that the plan is incorrect. The red boundary of the plan inadequately illustrates the extent of the area subject to the alleged operational development and, in particular, the stables as extended are partly within and partly outside the appeal site. It would be impossible to correct the plan without implications in respect of the allegations and requirements. The plan is defective, though that in itself would have been correctable if other matters had not rendered the notice so defective.
6. The allegation makes no reference to the purpose for which the steel-framed building is intended. The statements of both parties refer to the development being intended for residential use, and indeed, that is what the completed building has been used for over recent months.
7. The allegation at 3(iii) refers to stables in the foreground of the photograph in the notice, whereas there is no such stable in this position.
8. The requirement at 5(i) is to demolish a building (singular), yet the allegation refers to the erection of a steel framed building and a wooden stable building. The requirement is ambiguous.
9. Paragraph 4 of SI 2002/2682 for England indicates that an enforcement notice shall specify the reasons why the local planning authority considers it expedient to issue the notice; all policies and proposals in the development plan which are relevant to the decision to issue the notice; and the precise boundaries of the land to which the notice relates (whether by reference to a plan or otherwise). The plain words of the provisions indicate that a plan is not mandatory and it is perfectly possible to specify the precise boundaries merely by giving the address of the premises.
10. The reasons for issuing the notice reiterate the reasons given for refusing application 2022/2348/FUL, which relate to the development of housing in the open countryside. Whilst this complies with s173(10) to some extent, no reason is given why it is expedient to include the erection of a wooden stable building in the allegation. S172(1)(b) provides that an enforcement notice can only be issued where it appears to the local planning authority to be expedient to do so.
11. An enforcement notice must be drafted to tell the recipient fairly what has been done wrong and what must be done to remedy it<sup>1</sup>. I find the notice to be

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<sup>1</sup> Miller Mead v MHLG [1963] 2 WLR 225

fundamentally defective as I consider that it is hopelessly ambiguous and uncertain. The notice is a nullity.

12. I have a duty to get the notice in order and I have wide powers to correct the notice including the substitution of the plan so long as the amendments would cause no injustice to the parties. However, where a notice is a nullity, there are no powers of correction. Whilst certain deficiencies could have otherwise been corrected, that option is not open to me.
13. I appreciate that at the time of the enforcement investigations, officers were limited in their ability to carry out site inspections due to COVID restrictions. Nevertheless, greater attention should have been given to the accuracy of the notice which is dated 12 October 2023, post-dating the extension of the stables and hardstanding. The Council should have been alert to the deficiencies of the notice and could have considered withdrawing the notice and serving a new one under the second-bite provisions.

### **Conclusion**

14. I conclude that the notice is a nullity. In these circumstances, the appeal on the grounds set out in s174(2) (a), (d) and (f) of the 1990 Act as amended and the application for planning permission deemed to have been made under s177(5) of the Act, as amended, do not fall to be considered.

*P N Jarratt*

INSPECTOR

## **Appearances**

For the appellant:

Amanda Sutherland, Sutherland Property and Legal Services Ltd.

Tony Harvey, appellant

For the Local Planning Authority:

Anna Clark

Lynsey Bradshaw, Planning Officer.

Interested Parties:

Gillian Barker

Richard Woodhouse

Garfield Kennedy

Nick Hall

Stuart Vaughan

Paul Salariya