



Appeal Decision

Site visit made on 3 February 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21 February 2025

Appeal Ref: APP/F2605/C/23/3321525

4 Manor Cottages, Church Road, Wretham, Thetford IP24 1RL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Raymond Farmer against an enforcement notice issued by Breckland Council.
- The notice was issued on 24 March 2023.
- The breach of planning control as alleged in the notice is:
Without planning permission:
 - (1) The material change of use of the land from residential dwelling and agriculture to a mixed use of residential dwelling, agriculture, storage and sale of motor vehicles and leisure use.
 - (2) Operational development comprising the erection of a fence, brick walls and gate over 2 metres in height adjacent to a highway (Church Road) and the laying of a hard surface and erection of fencing and gates for an open-air arena/temporary car storage area.
 - (3) Operational development comprising the construction of a glamping pod and associated jetty and excavations to enlarge the existing pond.
- The requirements of the notice are to:
 - (1) Permanently cease the use of the land for the storage/sale of motor vehicles and leisure use.
 - (2) Permanently cease the use of open-air arena/temporary car storage area edged red on the attached photograph numbered 2.
 - (3) Permanently remove all motor vehicles on the Land which are not directly connected with the lawful use of the residential property.
 - (4) Permanently remove the fence, brick walls and gates adjacent to the highway as shown on the attached photograph numbered 1 and marked with a blue line and all resultant debris.
 - (5) Permanently remove the open-air arena/temporary car storage area edged red on the attached photograph numbered 2, including removal of the hard surface, the enclosure comprising fencing and gates and re-grass the area.
 - (6) Permanently remove the glamping pod and the jetty shown in photograph number 3 and restore the pond to the original size shown on photograph number 4 (marked indicatively in black edging on the attached photograph numbered 3). Permanently remove all resultant debris and re-grass the area.
- The periods for compliance with the requirements are: Steps 1–3 – 56 days; and Steps 4–6 – 6 months from the date that this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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.

Summary Decision: No further action is taken.

Validity of Notice

1. There are several components to the alleged breach of planning control set out in the enforcement notice. These include an alleged material change of use of the land to a mixed-use comprising residential use, agricultural use, use for the storage and sale of motor vehicles and leisure use. The allegation also includes operational development comprising the erection of fencing, brick walls and gates, the laying of an extensive hard surface area, the construction of a glamping pod with associated jetty and excavations to an existing pond.

2. Section 173(3) of the 1990 Act (as amended) requires an enforcement notice to specify the steps which the authority require to be taken, or the activities which the authority require to cease, to achieve the purpose of remedying the breach of planning control or harm to amenity. It follows that an appellant must be able to understand from the notice what they are required to do in order to comply, noting that the sanctions for non-compliance are severe.
3. As set out in the header, there are six requirements set out in the notice. There are issues with each of these steps, which are discussed in order below.

Step 1

4. The Council considers the lawful use of the appeal site to be a mixed use of residential dwelling and agriculture. The notice, which attacks the whole of the appeal site, says a material change of use has occurred to a new mixed-use, which also includes leisure and use for the storage and sale of cars.
5. The first step requires the leisure use to cease on the “Land”, which means the requirement must be complied with across the whole of the site. However, the parameters of the leisure use are not clearly defined. Noting the lawful use of the site includes residential use, it is unclear what types of leisure activity must cease. This is particularly problematic in respect of the dwelling and its curtilage, as typical recreational activities associated with residential use could also be described as “leisure” activities.
6. Whilst the Council may well have intended the leisure element to capture only the glamping pod, jetty and extension to the pond, this is not clear from the notice. The first requirement is therefore ambiguous in terms of what activities must cease, and where on the site those activities must cease.

Step 2

7. The second step requires use of the open-air arena/temporary car storage area to cease, but does not say what use must cease. Whilst the Council likely intended this step to require cessation of the use for the storage and sale of cars, the notice, as drafted, requires all use of this area to cease. Again, this creates uncertainty with regard to how this area may be used, to ensure compliance with the notice.

Step 3

8. Step (3) requires all motor vehicles not directly related to the lawful residential use of the property to be removed from the appeal site. However, many of the vehicles for sale are, at times, said to be used by the appellant in his personal capacity for hobby use. Arguably, use of the vehicles in this way, or some of them at least, could directly relate to the residential use of the property. In turn, it is not clear which vehicles must be removed, nor how many of them, in order to comply with this requirement.
9. The requirement would also seemingly require removal of agricultural vehicles, notwithstanding the lawful agricultural use of the site. Whilst this may not have been the intention of the Council, once again, this creates ambiguity in terms of what must be done to comply with this step.

Step 4

10. This step requires the fence, brick walls and gates adjacent to the highway to be permanently removed. A thick blue line has been used on aerial photograph (1) attached to the notice to demarcate the fence, brick walls and gates which must be removed.
11. It is unclear whether the line, which follows a broadly straight trajectory, incorporates the brick walls and piers which run inwards from the highway towards the main house, nor the gates themselves. Notably, these elements are set further back from the highway and do not run contiguous with the front fence which are more clearly within this line. Whilst the Council's evidence suggests these elements were intended to be captured, this is not clear from the notice itself.
12. At the time of the notice, the front boundary comprised a close boarded fence which was attached to a lower post and rail fence. Yet it is unclear whether the totality of this fencing must be removed, including the post and rail elements. Notably, there is also nothing which says what should replace the removed boundary treatments, which means it is unclear whether any boundary treatments are permitted to remain (noting that this land runs alongside the highway). This issue again creates uncertainty in terms of what must be done to comply this step.

Step 5

13. This step requires removal of the hard-surfaced open air arena/temporary car storage area, including the fenced enclosure and gates. The issue here is similar to the issue identified in Step (4): the red line drawn around the area appears to incorporate the front boundary treatment along the southern boundary to the property, yet it is not clear whether both the close boarded fence and the post and rail fence must be removed. Again, the requirement is silent on what could replace any removed fencing.

Step 6

14. Finally, this step requires the pond to be restored to its original size, by reference to two aerial photographs attached to the notice. It is difficult to identify the extent of the pond from photograph (4), due to issues with the quality of this photograph. Whilst the indicative black line around the pond in photo (3) is more helpful, it still lacks precision. Notably, the photo does not show the pond's original size, but instead shows it after excavation. It is also not possible to discern the depth of the original pond from the photos (or the indicative line), which creates additional ambiguity with the scope of the requirement.

Conclusion

15. Collectively, the requirements of the notice are therefore too uncertain and ambiguous. In line with the test established in *Miller-Mead*¹, the appellant could not tell with reasonable certainty what steps they must take to comply with the requirements of the notice. Moreover, I do not consider that my powers of correction under s176(1) of the 1990 Act would satisfactorily overcome all of the issues identified, even when the notice is read alongside the Council's evidence. The notice therefore falls foul of s173(3) of the 1990 Act as amended, and in turn, I conclude that the notice is a nullity.

¹ *Miller-Mead v MHLG* [1963] 2 WLR 225

16. In these circumstances, the appeal on the grounds set out in 174(2)(a), (c), (f) and (g) 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 Decision

17. 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 Council should consider reviewing the register kept under section 188 of the 1990 Act as amended.

James Blackwell

INSPECTOR