

Appeal Decisions

by Elizabeth Jones BSc (Hons) MCTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 February 2017

Appeal A Ref: APP/V2635/C/16/3154398

Appeal B Ref: APP/V2635/C/16/3154399

Appeal C Ref: APP/V2635/C/16/3154400

Land at Claybrook Park, 38 Broadend Road, Walsoken, Norfolk PE14 7BQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Kim Lorraine Taylor (Appeal A), Mr Jonathan Paul Eales (Appeal B) and Mr Julian Hallett (Appeal C) against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
- The enforcement notice was issued on 14 June 2016.
- The breach of planning control alleged in the notice is failure to comply with condition No 2 of a planning permission Ref 06/02009/FM granted on 22 December 2006.
- The development to which the permission relates is "Construction of two buildings for storage/warehousing/vehicle parking with associated parking and turning area, bunding and screening". The condition in question is No 2 which states that: "Within one month of the date of this permission, a detailed scheme for the resurfacing of the vehicular access to the site from the highway to the access gates shall be submitted to and approve in writing by the Local Planning Authority"*[sic]*. The access road shall be resurfaced in accordance with the approved scheme within one month of the date of the approval of the scheme". The notice alleges that the condition has not been complied with.
- The requirements of the notice are:
 - Step (1) Submit in writing to the Local Planning Authority for approval a detailed scheme for the resurfacing of the vehicular access to the site from the public highway (Broadend Road, West) to the access gates.
 - Step (2) Resurface the vehicular access from the public highway (Broadend Road, West) to the access gates in accordance with the details approved by (1) above.
- The periods for compliance with the requirements are:
 - Requirement (1): one calendar month.
 - Requirement (2): six calendar months from the date the detailed scheme submitted for (1) above has been approved in writing by the Local Planning Authority.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld with a variation.

Preliminary Matter

1. Although not stated in the notice, the Council suggests that condition 2 of planning permission reference 06/02009/FM (the '2006 permission') has not been complied with because the required scheme has not been submitted for approval and the access road has not been resurfaced.
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Appeals A, B and C on ground (f)

2. The ground of appeal is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to achieve the purpose.
3. The appellants seek to vary the notice so that either there is no requirement to submit a scheme or that the scheme would not meet the standards of the Highway Agency.
4. The appellants' case is that the 2006 Permission is only partially implemented because the buildings have not been constructed. The parking and turning areas on the site have been completed and have been used by HGV operators and a skip company but the use has been low. For this reason, and since planning permission may be sought to develop the land for housing, the appellants consider it would be excessive to submit an access scheme as required by the Council.
5. The purposes of an enforcement notice are set out in section 173(4) of the Act and are to remedy the breach of planning control (s173(4) (a)) or to remedy injury to amenity (s173(4)(b)). The appellants have not made an appeal on ground (a), that planning permission ought to be granted. The appeals on ground (f) could only succeed if the appellants proposed lesser steps that would remedy the breach of planning control. Their suggested steps would not, in fact, rectify the failure to comply with condition 2.
6. As there is no ground (a) appeal I cannot consider whether the condition was reasonable and necessary. However, it is relevant that the 2006 permission has been implemented and remains extant, meaning that the buildings could be constructed in the future and/or the land could be used as an outdoor haulage company site. There is no guarantee that any planning application for housing will be made and/or approved. Accordingly, it is not excessive for the notice to require that the condition is complied with.
7. I note the appellants' comments that the use of the site has changed due to personal circumstances and their concerns that undertaking the works required by the Council would be costly. I also note that the Highway Agency states that the failure to comply with the condition has created highway problems. Nonetheless, these matters relate to planning merits and fall outside the remit of this appeal.
8. For the above reasons, I conclude that the appeals on ground (f) must fail.

Appeals A, B and C on ground (g)

9. Ground (g) is that the time given to comply with the requirements of the notice is too short.
10. A highway safety objection is normally a compelling reason to secure speedy compliance. It is relevant that the Highways Agency has been paying for road repairs related to the site. However, it is also true that the buildings subject to the 2006 permission are not in place. The site has a lawful use for haulage, but it seems clear that recent use of the site has been low.
11. The notice gives one month to submit a scheme for re-surfacing the access. It seems to me that this would give the appellants relatively little time to

commission and/or draw up plans. The Council does not dispute that the works required could cost up to £20K which the appellants indicate they do not have. The Council points out that the cost would have been less in 2006 but the question for ground (g) is whether the period is reasonable now.

12. I also find that it would be reasonable to give the appellants time to make and receive a decision on a planning application for the site. The Council has seen little information from the appellants about their proposal, but the 2006 permission was not implemented as planned and the appellants have been losing income from the site. It is in the appellants' interest to re-consider the use of the land.
13. Having regard to the submissions from both parties, I consider that it would be excessive to give the appellants 18 months to comply with the notice as a whole. There is no need to extend the period for compliance with step (2) at all. For the reasons given, however, it would be reasonable to give the appellants three months rather than one to comply with step (1). This would not lead to procrastination or uncertainty, but it would allow the appellants to draw up a detailed scheme while considering their options. The appeals on ground (g) partially succeed in this respect.

Formal Decision

14. It is directed that the enforcement notice be varied by the deletion of the words "one calendar month" in paragraph 5 (a) in relation to Step (1) and the substitution therefor of the words "three months" as the time for compliance.
15. Subject to this variation, the appeals are dismissed and the enforcement notice is upheld.

Elizabeth Jones

INSPECTOR