

Appeal Decision

Site visit made on 30 March 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 24 April 2017

Appeal Ref: APP/X1545/C/16/3156806

Land opposite Old Post Office, Maldon Road, Langford, Essex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Roy Pipe against an enforcement notice issued by Maldon District Council.
 - The enforcement notice was issued on 8 August 2016 under ref. ENF/16/00019/01.
 - The breaches of planning control as alleged in the notice are:
 - a. The unauthorised material change of use of the land for the storage of building materials and tools.*
 - b. The unauthorised operational development to form a hard surface by laying disused building materials.*
 - The requirements of the notice are to:
 - a. Cease the unauthorised use of the land;*
 - b. Remove from the land all materials, tools and other detritus associated with the unauthorised use; and*
 - c. Remove from the land all materials and debris laid to create the hard surface.*
 - The period for compliance with the requirements is *Twenty-eight (28) calendar days*.
 - The appeal is proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion of the first sentence of paragraph 4 and the substitution therefor of the following sentence: "It appears to the Council that the above breaches of planning control have occurred within the last ten years and the last four years respectively." Subject to that correction, the appeal is dismissed and the enforcement notice is upheld.

The enforcement notice

2. The time limits for the taking of enforcement action in relation to various breaches of planning control are set out in section 171B of the Town and Country Planning Act 1990 as amended. For a breach involving operational development, which would include the formation of a hard surface by laying disused building materials, the time period is four years, whereas for a material change in the use of the land for the storage of building materials and tools it is ten years. The notice before me only specifies the four-year period, thus it is erroneous in that respect.
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3. Section 176(1) of the same Act permits corrections to a notice so long as no injustice is caused to the parties. The omission of the correct time limit within which enforcement action could be taken might prejudice an appellant in terms of a potential ground (d) appeal – that at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. However, there could be no question here of such an appeal being made in relation to the alleged material change of use, as the appellant confirms that the unlawful use only occurred in February 2016 when his nephew “...asked if he could store some building materials for future use as he lives on an estate nearby and does block paving and small building work.” In this case, the notice can be corrected without giving rise to any injustice.

Background and matters of clarification

4. The appeal concerns a piece of land, about 0.25 ha in area. It lies on the southern side of Maldon Road. Access is gained through metal gates. Whether or not an adjacent bus shelter should have been included in the land identified on the plan attached to the notice does not materially affect this appeal.
5. The appellant has produced a legal document probably from 1921 quoting the Settled Land Act 1925 which points to the land being a “timber yard”. However, the schedule to a Deed of Release made in 1950 refers only to a piece of land “Together with the workshop standing upon enclosure Number 103 or some part thereof.” This added to the Council’s aerial images from 2000 to 2014 and to the absence of the workshop identified in 1950 probably means that the Council is correct to assume that any use of the site as a timber yard has been abandoned. Equally, the appellant is in all probability correct to suggest that the land has never been used for agriculture. Whilst the appeal does not turn on any of these matters, the appeal site may best be described as an area of rough ground with nil use.
6. The appellant is clearly aggrieved at the Council’s enforcement action when set alongside a perceived lack of action with regard to a nearby grade 2 listed building. However, this matter is not before me in this appeal. The concern raised about the listed building can be addressed by separate means if necessary. I should confirm that as there is no ground (a) appeal, the planning merits of both developments are not before me.

The appeal on ground (f)

7. Section 173 of the 1990 Act as amended indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These purposes are to remedy the breach of planning control as specified in section 173(4) (a) or to remedy any injury to amenity which has been caused by the breach as specified in section 173(4) (b).
8. The purpose of the subject enforcement notice is clearly to remedy the breaches of planning control in their entirety rather than to remedy the injury to amenity by requiring some lesser steps to be taken.
9. Where no appeal has been brought on ground (a) and consequently there is no deemed application for planning permission, ground (f) cannot be interpreted as allowing arguments about the planning merits of the developments or alternative modified developments.

10. The key matter in this appeal is therefore whether the requirements of the notice exceed what is necessary to achieve the purpose of remedying the breaches of planning control.
11. The appellant does not contest the first two requirements (a and b). The gist of the appellant's case in respect of the third requirement (c) is that it is excessive as neither the Council nor the appellant can be sure which items of hard core on the surface have been added recently and which were laid well back in time taking into account the former use as a timber yard.
12. No detailed survey information has been produced by the appellant to show any pre-existing hard surfaces on the site. There are what appear to be the bases for two former buildings reflecting the two square shapes on the plan attached to the notice. These are not however specifically attacked by the notice. The Council's aerial images do not show any hard surfaces or tracks leading to the centre of the site from the access gates. The third party noticed in the relatively recent past a membrane being laid at the double metal gates and a track being built of rubble so that the lower more boggy parts of the site could be reached.
13. I saw the compressed hard core close to the site entrance and the assortment of other disused building materials – concrete blocks, grey and red bricks, stones, gravel and lumps of tarmac – that have been deliberately placed close together to create a hard surfaced track that leads at a diagonal from the hard surface near the access gates to roughly the centre of the appeal site. All this appears to me to be of recent origin and it should not be difficult for the parties to identify.
14. Other disused building materials that are more scattered about the site, particularly those that can be found by progressing straight ahead from the hard core next to the entrance gates, do not form a recognisable or planned hard surface as such but they would need to be removed in any event to fully comply with requirement b. They can be classified as other detritus associated with the unauthorised use. For instance, amongst their number, there is a concrete post typically used in fencing work.
15. On the facts and circumstances of this case, I find that the requirements of the notice do not exceed what is necessary to remedy the breaches of planning control. No lesser steps would give effect to the notice. In the light of the alleged conflict with development plan policies, it would not be disproportionate to require the appellant to carry out the steps required by the notice. Accordingly, and taking into account all other matters raised in the written representations, I conclude that the appeal on ground (f) should not succeed. The enforcement notice will be upheld as corrected.

Andrew Dale

INSPECTOR