
Appeal Decision

Site visit made on 3 April 2017

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 12 June 2017

Appeal Ref: APP/V2255/C/16/3161589

Land at Homestall Road, Newnham, Faversham

- 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 by Mrs Anne Nolan against an enforcement notice issued by Swale Borough Council.
 - The enforcement notice, ref.16/500922/OPDEV, was issued on 22 September 2016.
 - The breach of planning control alleged in the notice is undertaking work with the intention of substantially altering the existing levels on the land, which in the opinion of the Council would require the benefit of planning permission.
 - The requirements of the notice are to:
 - (i) Restore the land to its original levels and condition, using clean soil and materials.
 - The period for compliance with the requirements is 2 months.
 - 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. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision

1. The appeal is allowed on ground (g), and the enforcement notice is varied by:

DELETION of the words '*2 months*' from paragraph 6 of the enforcement notice; and,

SUBSTITUTION of the words '*4 months*' as the period for compliance.

Subject to this variation the enforcement notice is upheld.

Background matters

The site enforced against is a triangular area of about 0.15 of a hectare with its longest – northern - boundary alongside the boundary of the M2 motorway roughly midway between Sittingbourne and Faversham. The southern boundary is adjacent to an area of land with a large highway drainage pond, and to the east is an area of deciduous woodland. Access to the site is via a narrow well-constructed spur off Homestall Road, where the road itself has been re-built to pass beneath the motorway. This spur, and a turning head at its western end, are clearly shown on the enforcement notice plan, and lie outside the area enforced against. On my visit I saw there were some 5 caravans stationed outside the enforcement land, as well as a van, and 2 trailers. There was a shed type structure at the western end, again outside the enforcement land.

2. There had been a residential caravan on the site for some years, occupied by a man who had worked on the motorway construction in the 1960s, and who acquired the site from the Ministry of Transport in 1969. A series of temporary and personal planning permissions were granted, and eventually in 1988 the Borough Council granted a lifetime personal permission on compassionate grounds, with a condition requiring the use to cease and the site to be cleared when the original occupant no longer lived there. At that time the site was partly wooded and there were a number of sheds as well as the residential caravan. The occupant eventually left the site to be cared for in a nursing home, and died some years later. No-one occupied the caravan subsequently, and it became dilapidated. In late 2014, I understand the site was cleared of all the sheds and vegetation by the current appellant, and signs of its occupation as a caravan site were removed.
3. Given the earlier history, the Council determined that the use for siting a residential caravan had become lawful, and had not been abandoned. They granted a certificate of lawful use (LDC) for the siting of one caravan for residential purposes in August 2016¹. The plan attached to the decision notice identifies the relevant land as being identical to the enforcement area. I note that the LDC does not relate in any way to operational development.

The appeal on ground (f)

4. This ground is that the steps required to be taken by the notice exceed what is necessary to remedy any breach of planning control, and lesser steps would overcome the objections. The appellant says that the site already contained hardstanding and underground services. The underground services could not be restored. If the site is to be restored to its original condition, that should include the original hardstanding, and the notice should specify the areas to be hard surfaced.
5. The concrete kerb along the southern side of the spur, and the turning head can clearly be seen in photographs taken by the Council in mid-2015, and I saw are still visible. The photographs also show piles of hardcore near the turning head. It is apparent that the area enforcement area has been excavated and levelled. In particular - as I saw on my visit - there is effectively a 'cliff face' along the motorway boundary, and tree roots have been exposed along the woodland boundary. Some parts have been surfaced with compacted hardcore, and there are various heaps of spoil.
6. Furthermore, a substantial mature tree has been removed that formerly stood near the northern side of the turning head, and virtually all vegetation has been stripped. The levelled land is in distinct contrast to the earlier situation where the land sloped gently up from the line of the northern side of the access road.
7. The area that has been excavated, and to some extent surfaced, is readily apparent. I concur with the Council's view that the appellant can reasonably be expected to know the condition of the land before the works were carried out - particularly since they were relatively recent. Furthermore, I consider the enforcement notice plan defines the relevant area with sufficient accuracy for the appellant to know the extent of land to be restored.

¹ Decision notice ref. 16/503761/LDCEX, dated 19 August 2016.

8. It is not apparent that some parts of the enforcement site were previously hard-surfaced as is claimed, and no evidence has been put forward to indicate the presence or extent of such surfacing. If surfacing previously existed, it appears to me that the requirement to restore the land to its original levels and condition, using clean soil and materials is probably a lesser requirement than asking for reinstatement of hard surfacing. Furthermore, there is no requirement to restore any underground services or drain covers, or to replace trees that have been lost.
9. The appellant has not put forward a lesser step that would achieve the objective of the notice, and it appears to me that the required works are probably the least necessary to restore the land to its former condition. The appeal on ground (f) therefore fails.

The appeal on ground (g)

10. This ground is that the compliance period is too short, and a longer period should be allowed. The appellant is an elderly woman, who has recently needed hospital treatment on several occasions. Her grandson, who was her carer, has recently been killed in a road accident. In view of these circumstances it is argued that a period of 12 months should be allowed.
11. It is appreciated that the Council's dealings were formerly with the appellant's late grandson, and that the appellant herself is elderly. However, as the Council say, the required works are not complex and cover a relatively small area. It is of course not expected that the appellant would carry out any works herself. The Council are aware that she has an extended family, some of whom might be instructed to do the works.
12. Notwithstanding those considerations, it appears to me that the appellant should have the opportunity to obtain quotations for the works if she wishes to, and possibly instruct someone from outside her family. I consider a 4 month period would be more realistic to allow this process to take place. The Council are concerned that the works should be expedited in order to remedy harm they consider is caused to the Area of Outstanding Natural Beauty in which the appeal site lies. However, on balance, this relatively short extension of the compliance period would be justified in order for the appellant to have a more reasonable choice in the way the works would be executed. The appeal on ground (g) therefore succeeds, and I shall vary the enforcement notice accordingly.

Conclusions

13. For the reasons given above I conclude that the appeal should succeed to the limited extent on ground (g), and that a reasonable period for compliance would be 4 months. I am varying the enforcement notice accordingly, prior to upholding it.

Stephen Brown

INSPECTOR