



Appeal Decisions

Site visit made on 8 January 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 06 August 2019

Appeal Ref: APP/U1430/C/17/3189174 & 3189175 Bryant's Wood, Wards Lane, Wadhurst

- 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 Act).
 - The appeal is by Mr Edward Coppard (3189174) & Mrs Rebecca Coppard (3189175) against an enforcement notice issued by Rother District Council.
 - The enforcement notice, ref. MKN224, was issued on 4 October 2017.
 - The breach of planning control alleged in the notice is without planning permission the undertaking of large-scale engineering works creating numerous hardstanding areas and severally altering the appearance of the land.
 - The requirements of the notice are to:
 - i) Cease all engineering operations within the Land,
 - ii) Cease all importation of soil,
 - iii) Cease the use of the land otherwise than in connection with the authorised forestry use of the land,
 - iv) Remove all hard standings hard-core and other materials including rubble, rubbish, debris, tools and equipment from the land
 - v) Reseed replant and re-profile the land so that it can be returned to its former woodland condition.
 - vi) Remove all rubbish debris tools and equipment from the land arising from the compliance with step (v) above.
 - The period for compliance with the requirements is one month for steps i) to v) and six months for step vi).
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (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 appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The enforcement notice is quashed.

Background matters

2. The appeal site is an area of ancient woodland bordering the southern bank of Bewl Water reservoir. Access is via a gate on Wards Lane, a single-track road leading down to the Water. Most of the land is sweet chestnut coppice, but with some holly, birch and oak. There are no public footpaths on the land.

3. At the time of my visit there was an extant Forestry Commission Felling Licence permitting coppicing of sweet chestnut over roughly a half of the site extending back from Wards Lane towards the south-east¹.
4. The appellants' entire holding extends some 300 metres from Wards Lane to the south-western boundary, and some 60 to 70 metres back from the bank of Bewl Water. The enforcement notice covers approximately two-thirds of the site from Wards Lane towards the south-east.
5. The Council became aware of the possible breach following receipt of a complaint in June 2017 and visited the site in July of that year when they took photographs. A Planning Contravention Notice was issued on 17 July 2017 and response received later that month.

The enforcement notice

6. Looking at the site it was apparent that there are three principal areas where trees have been cleared, and the soil regraded and compacted to form roughly circular and level areas accessible from tracks close to the south-eastern site boundary, and further down the slope towards the water. These areas are visible on aerial photographs submitted by the Council at appeal stage.
7. However, there had clearly been ground works on the area close to the Wards Lane access to allow space for vehicles to manoeuvre and park, and possibly for storage of forestry materials. Furthermore, the two principal tracks running through the site, which had probably not been in vehicular use for many years, had been compacted and possibly widened. This had also contributed to changes in the appearance of the land.
8. As the appellants say, the requirements of the notice are vague in that the specific areas where re-planting is required have not been identified. This goes back to the allegation, which merely refers to 'numerous hardstanding areas'. While there are three fairly obvious areas, there are also sections of the access tracks that may have been re-profiled as well as the area close to the site access. Furthermore, it is not at all clear which parts of the alleged operations are in connection with the authorised forestry use, and which parts the council consider fall outside that use.
9. Overall, I consider the notice is defective in that it is imprecise as to the areas of land affected, and to what use they are being put other than the authorised use. To my mind the notice does not accord with the long-standing legal principle that it should tell the appellants fairly what they have done wrong and what they must do to remedy it.
10. I have wide powers to correct a defective enforcement notice or vary its terms under the provisions of s176(1) of the Act. However, in this case I can have no reasonable certainty as to the number or extent of areas of hardstanding, where it is considered the appearance of the land has been significantly altered, or for what purpose. I cannot therefore correct or vary the notice without causing significant injustice to one or the other party.
11. I conclude that the enforcement notice is invalid and should be quashed. However, I note that this does not prevent the Council from issuing a new notice under the provisions of s.171B(4) of the Act.

¹ Licence ref. 019/392/13-14, dated 7 February 2014.

Conclusions

12. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under the various grounds as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Stephen Brown

INSPECTOR