



Appeal Decision

Site visit made on 27 August 2019

by Jessica Graham BA(Hons) PgDipL

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

Decision date: 5 September 2019

Appeal Ref: APP/X1118/C/18/3210697

14 Oakdale Avenue, Swimbridge, Barnstaple, North Devon EX32 0QW

- 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 Simon Bull against an enforcement notice issued by North Devon District Council.
- The enforcement notice was issued on 6 August 2018.
- The breach of planning control as alleged in the notice is without planning permission and within the last 4 years, the creation of a vehicular access onto a classified road.
- The requirements of the notice are to re-instate the hedge bank to its former condition effectively closing the vehicular access on to the classified road.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(d),(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the notice is upheld

Procedural matters

1. An interested party contends that the appeal is not valid, since it was made outside the time limit contained in the enforcement notice. However, the notice states that it will take effect on 6 September 2018 unless an appeal is made against it beforehand. The appeal was made on 5 September 2018, and is valid.
2. The Appellant's agent contends that the Council has not complied with its duty to enter details of the enforcement notice on its public register within 14 days of service.¹ While this alleged failure may have implications in other proceedings, it does not alter the fact that the current appeal has been validly made, and falls to be determined on the basis of the grounds argued.

Background

3. No.14 is a detached bungalow, with vehicular access from Oakdale Avenue. Its sizeable rear garden adjoins a classified road. In November 2013 planning permission was granted for alterations and extensions to the property², and in 2014 the Appellant created a vehicular access from the rear garden to the adjoining classified road to facilitate these works. He advised the Council that this access was temporary, and would be closed in April 2015 when building works were complete. The access was not subsequently closed, and in September 2015 the Council commenced enforcement action.

¹ S.188 of *The Town and Country Planning Act 1990* (as amended) and Article 43 of the *Town and Country Planning (Development Management Procedure)(England) Order 2015*

² Ref 56416

4. In February 2017 the Appellant made an application for retrospective planning permission for the creation of the vehicular access, which was refused by the Council³. An appeal against that refusal was dismissed in November 2017⁴, and the Council subsequently issued the enforcement notice that is the subject of this appeal.

The appeal on ground (d)

5. The ground of appeal is that by the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. S.171B(1) of the 1990 Act provides that where the breach consists of the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The enforcement notice was issued on 6 August 2018, so to succeed on this ground, the Appellant would need to demonstrate that on the balance of probabilities, the creation of the vehicular access had been substantially completed by 6 August 2014.
6. The Appellant's agent rightly points out that there is caselaw⁵ to the effect that the evidence of an Appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the Appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
7. The Appellant's case is that the access was created in July 2014. In support of this, he has written a letter "To whom it may concern", which is dated 15 October 2018, but is not signed. The letter states that the work of widening the opening to the bank and hedge to the rear of the property was carried out in July 2014, with the help of a contractor, before the Appellant went away on a family holiday to Spain. The letter goes on to explain that the Appellant and his family always take their holidays at the start of the summer holiday period, which is normally around 25 July. It also explains that he is unable to provide an invoice from the contractor since he paid cash and did not ask for one, as he would not have been able to offset the cost against his business at that time.
8. However, as the Council points out, this is at odds with the information provided in an earlier letter written by the Appellant to the Council, which is dated 2 December 2015, and is signed. That letter was written in reply to the Council's Planning Contravention Notice (PCN) dated 19 November 2015; in response to the PCN request to provide the date when the vehicle access was created, the Appellant wrote "Existing access was widened in October 2014."
9. Thus, while there is no external or independent evidence to either corroborate or conflict with the Appellant's version of events, the evidence provided by the Appellant himself is contradictory.
10. It is worth noting, in this context, that it is an offence to knowingly or recklessly make false or misleading statements in a material particular when purporting to comply with a Planning Contravention Notice.⁶ This was explained

³ Ref 62592, dated 4 April 2017

⁴ Ref APP/X1118/D/17/3178794

⁵ *Gabbittas v Secretary of State for the Environment & Newham Borough Council* [1985] JPL 630

⁶ S.171D(5) of the 1990 Act

in the Council's PCN dated 19 November 2015, which also advised that the maximum penalty on conviction of such an offence would be a fine of £5,000. When composing and signing his letter of 2 December 2015, then, the Appellant would have been aware of the importance of providing true and accurate information, and the penalty for failing to do so. I therefore attach considerable weight to the statement in that letter that the works to create the vehicular access were carried out in October 2014.

11. Neither the subsequent letter written by the Appellant on 15 October 2018, nor the Written Statement of appeal provided by his professional agent, make any attempt to explain the discrepancy between the Appellant's statement in 2015 that the access was created in October 2014, and his current claim that it was created in July 2014. Both cannot be right. In the absence of any acknowledgment of, or explanation for, this material change in the Appellant's position I attach only limited weight to his unsigned letter of 15 October 2018, submitted in support of the current appeal.
12. In summary, I find that the evidence contained in the Appellant's signed letter of 2 December 2015 – which must be afforded considerable weight since the provision of any deliberate or reckless untruth within it would constitute a criminal offence – outweighs the evidence contained in his unsigned letter of 15 October 2018, which carries no such penalty.
13. I conclude that the Appellant has not demonstrated that, on the balance of probability, the unauthorised vehicular access was substantially completed before 6 August 2018. The enforcement notice was therefore issued within the four-year time limit, and the appeal on ground (d) must fail.

The appeal on ground (f)

14. The ground of appeal is that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity. In this case, the purpose of the notice is to remedy the breach of planning control. This means that under the provisions of s.173(4)(a) of the 1990 Act, the steps required by the notice should achieve the restoration of the land to its condition before the breach took place.
15. The Appellant's case on this ground is that the requirements of the enforcement notice do not state clearly what is required to achieve compliance, in that the plan attached to the notice does not indicate where the unauthorised access is located or where the remedial works should take place, and no detail is provided as to the size, species or location of planting.
16. The Appellant's agent cites the case of *Payne v NAW*⁷ as authority for the proposition that if the requirement does not clearly state what is needed to achieve restoration to a previous condition, such a requirement may be held to be imprecise. However, it is worth noting that in that particular case, the requirement was for a restoration scheme to be submitted to the local planning authority for its approval; the Court held that such an approach fell foul of the s.173(3) requirement that the notice shall "specify the steps which the authority require to be taken", since those steps would not be known until a scheme was submitted and approved. It is also worth noting that in general, the person who has carried out the development of the land will be in the best

⁷ *Payne v National Assembly for Wales & Caerphilly CBC* [2007] JPL 117

position to know the state of the property before the development was carried out, such that it will be enough for the notice to require that the land be returned to the condition it was in before the development took place.

17. In this particular case, I am not persuaded that the Appellant could be in any reasonable doubt as to the location of the unauthorised vehicular access, which has after all been the subject of a planning application and subsequent appeal. Nor do I see any lack of clarity or precision in the straightforward requirement to reinstate the hedge-bank to its former condition. There is no dispute that the boundary treatment that has been removed was indeed a hedge bank, and since it was the Appellant who removed it, he is in the best position to know its condition prior to that removal.
18. I share the Council's view that it is not necessary for the notice to specify, or seek to control, the type of planting or species mix. It is clear that the requirement to reinstate the hedge-bank to its former condition includes the provision of replacement hedgerow species, and there is no reason to believe that the plants removed as part of the unauthorised development differed significantly from the mix of hedgerow species growing in the remaining hedgebank.
19. I consider that the requirement of the notice is clear, precise, and asks for no more than is necessary to remedy the breach of planning control. I conclude that the appeal on ground (f) must fail.

The appeal on ground (g)

20. The ground of appeal is that the time given to comply with the requirements of the notice is too short. The notice specifies a compliance period of three months. The Appellant's case is that a six month compliance period is needed, to ensure that (on the basis of the appeal timings then envisaged) replacement planting would not have to be undertaken outside the planting season.
21. The planting season is generally agreed to run from September to March. Since this Decision Letter will be issued very close to the beginning of this season, I consider that the specified period of three months should provide ample time for the appropriate planting of the replacement hedge-bank. I therefore conclude that the appeal on ground (g) must fail.

Conclusion

22. For the reasons given above I conclude that the appeal should not succeed.

Formal Decision

23. The appeal is dismissed and the enforcement notice upheld.

Jessica Graham

INSPECTOR