



Appeal Decisions

Site visit made on 18 September 2019

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 04 October 2019

Appeal A - Appeal Ref: APP/W4705/C/19/3224593

Land to the east of 4 Bell Dean Road, Bradford, West Yorkshire

- 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 Mrs Shaheen Kauser Bhatti against an enforcement notice issued by City of Bradford Metropolitan District Council.
 - The enforcement notice was issued on 19 February 2019.
 - The breach of planning control as alleged in the notice is: without planning permission, the change of use of the land for the siting of a metal container and the construction of security fencing on the east to west boundary of the land as shown in the photographs attached to the enforcement notice.
 - The requirements of the notice are i. Remove the metal container from the land ii. Remove the security fencing on the east to west boundary of the land from the land iii. Remove all arising materials from the land iv. Make good any damage caused to the land as a result of the compliance with the requirements of this notice.
 - The period for compliance with the requirements is 1 month.
 - 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.
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Appeal B - Appeal Ref: APP/W4705/C/19/3224594

Land to the east of 4 Bell Dean Road, Bradford, West Yorkshire

- 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 Miss Zahrah Miriam Bhatti against an enforcement notice issued by City of Bradford Metropolitan District Council.
 - The enforcement notice was issued on 19 February 2019.
 - The breach of planning control as alleged in the notice is: without planning permission, the change of use of the land for the siting of a metal container and the construction of security fencing on the east to west boundary of the land as shown in the photographs attached to the enforcement notice.
 - The requirements of the notice are: i. Remove the metal container from the land ii. Remove the security fencing on the east to west boundary of the land from the land iii. Remove all arising materials from the land iv. Make good any damage caused to the land as a result of the compliance with the requirements of this notice.
 - The period for compliance with the requirements is 1 month.
 - 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.
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Decisions

1. It is directed that the enforcement notice be amended by:
 - 1) The deletion of all the text in the allegation and the substitution of it by the following text:

'without planning permission, the material change of use of the land for the siting of a metal container and the construction of security fencing on the east to west boundary of the land as shown in the attached photographs.

- 2) The deletion of all the text in the requirements and the substitution of it by the following text:

'i. Cease the use of the land for the siting of the metal container. ii. Remove the metal container from the land. iii. Remove the security fencing on the east to west boundary of the land from the land. iv. Remove all arising materials from the land. v. Make good any damage caused to the land as a result of the compliance with the requirements of this notice.'

2. Subject to these amendments, the appeals are dismissed and the enforcement notice is upheld.

The enforcement notice

3. With regard to the wording of the notice, it alleges '... the change of use of the land for the siting of a metal container...'. The allegation is imprecise in that it refers to a 'change of use', whereas to reflect the definition of the term 'development' in s55(1) of the Act, it should state a 'material change of use of the land'. It follows that the requirements of the notice should also include the cessation of the unauthorised use of the land. I am satisfied that these corrections do not cause any injustice, or make the notice more onerous.

Grounds (f) and (g)

4. The grounds of appeal are: (f) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control, and; (g) that the period for compliance with the notice falls short of what is reasonable.
5. The enforcement notice relates to security fencing that surrounds the appeal site, and a metal container that has been placed within the site. The appellants state that the container was put on the land in the expectation of commencing a development that was previously granted planning permission (ref. 12/00117/FUL). However, it was the Council's view that that permission had lapsed. Consequently, a new planning application (ref. 19/01013/FUL) was submitted, and permission was granted on 2 May 2019 for four new dwellings on the appeal site.
6. The appellants contend that the container is required for the storage of materials for the new development. In the meantime, it is being used to store items that have been dumped on the land. The fencing is needed to deter the fly tipping on the site that has occurred over the years.
7. I agree with the appellants that both items would be needed on an active building site. I note the Council's position that, if the residential development was to commence, it may be that the container and the fence would be permitted development under Schedule 2, Part 4, Class A of the General Permitted Development (England) Order 2015. However, there is little substantive evidence that the development has commenced, or is about to commence. For example, there is no indication that a contract has been let for the development, or that a start date has been agreed.

8. Whether the purpose of the notice is to remedy either any injury to amenity or any breach of planning control, this can only be achieved by the removal of the container and fencing. The requirements are therefore commensurate with those purposes, and so the appeals on ground (f) fail.
9. The works to remove the fencing and container would not, to my mind, be particularly complex or time-consuming. I note that the appellants have not suggested an alternative time frame that they would consider more appropriate. Therefore, in the absence of compelling evidence to the contrary, I am satisfied that one month is a reasonable period for compliance with the requirements of the notice. The appeals therefore fail on ground (g).
10. I accept that it would be costly to move the container and then bring it back again for future use. However, the appellants have effectively incurred these costs themselves by installing the container without planning permission, and so this factor in itself does not justify an extension of the stated time period.

Conclusion

11. For the reasons above, subject to the corrections above, the appeals are dismissed, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR