



Appeal Decision

Site visit made on 30 September 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2019

Appeal Ref: APP/U3100/C/18/3218191

Land at Dix Pit, Stanton Harcourt, Oxfordshire

- 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 Controlled Reclamation (Oxford) Ltd against an enforcement notice issued by Oxfordshire County Council.
- The enforcement notice was issued on 28 December 2018.
- The breach of planning control alleged in the notice is failure to comply with conditions Nos. 2, 3 and 4 of a planning permission Ref 16/04159/CM granted on 18 April 2017.
- The development to which the permission relates is:
The continuation of development without complying with Conditions 1, 2, 3, 4, 9 and 11 of Planning Permission no. 15/02045/PDC in order to revise the levels of the approved landform; to allow importation of topsoil (and/or materials suitable for topsoil manufacture); to provide additional time to complete final restoration and landscaping of the site; and for consequential amendment to the aftercare details at Controlled Reclamation Landfill Site, Dix Pit, Stanton Harcourt, Witney OX29 5BB.
- The conditions in question are Nos 2, 3 and 4 which state that:
 - 2. Other than planting and grass seeding, final restoration of the site in accordance with the approved Restoration and Aftercare scheme reference 187CRLR/11 Rev D and to the contours shown on the approved Proposed Pre-settlement Landform drawing reference no. DIX001 Rev C and the removal of all plant and machinery shall be completed no later than 12 months from the date of this planning permission.*
 - 3. All landscape planting shall be completed within the first planting season following the final restoration of the site as required by condition 2.*
 - 4. All grass seeding shall be completed within the first sowing season following the final restoration of the site as required by condition 2.*
- The notice alleges that the conditions have not been complied with in that the requirements to re-contour the site and carry out landscaping have been not been undertaken as required by conditions 2, 3 and 4 of planning permission Ref: 16/04159/CM.
- The requirements of the notice are:
 - i) *Restore the land in accordance with the approved Restoration and Aftercare scheme reference 187CRLR/11 Rev D and to the contours shown on the approved Proposed Pre-Settlement Landform drawing reference no. DIX00` Rev C of planning permission reference 16/04159/CM.*
Where it is necessary to remove topsoil from the Land (where it has been returned to the Land and where the approved contours have been exceeded) the soils shall be stored on land awaiting restoration within the site, or, if necessary, removed from the site for storage. In either case, topsoil and subsoil shall be stored in separate stockpiles no higher than 3 metres. The removal and stockpiling shall be undertaken in a manner which ensures that the soil structure is maintained. Remove all plant and machinery on completion of works.

- ii) *On completion of step i) above. All landscape planting and grass seeding shall be completed as shown on drawing no. 187CRLR/12 Rev D in accordance with the approved Restoration and Aftercare scheme reference 187CRLR/11 Rev D.*
 - The periods for compliance with the requirements are:
 - Step i) 8 months
 - Step ii) 12 months
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(b),(e) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Controlled Reclamation (Oxford) Ltd against Oxfordshire County Council. This application will be the subject of a separate Decision.

Procedural matter

3. The planning permission to which the conditions in dispute relate is headed by an application reference No. MW.0141/16, and a District Ref: 16/04159/CM. The enforcement notice recites only the latter reference. However, there is no dispute about which permission the notice relates.

Appeal on ground (e) – that the notice was not served correctly

4. Regulation 5 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 requires that every copy of an enforcement notice served by a local planning authority under section 172(2) of the Act shall be accompanied by an explanatory note which shall include, amongst other things, (c) a list of the names and addresses of the persons on whom a copy of the enforcement notice has been served.
5. In this case, the list of those served did not include the names of all those served, but referred to “the Company Secretary”, “The Owner” and “The Occupier”, along with their addresses. In the case of the corporate body such as a company, the Company Secretary is an officer of that company, whose role is recognised in law. I consider that it is unnecessary to name any individual person holding that role. However, in respect of the owner and the occupier, the names should have been identified, so that the recipient of the notice will know exactly who has been served. I therefore find that the Regulation 5 duty has not been complied with, and that the notice was not served correctly.
6. However, Section 176(5) of the Act says that where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
7. In this case, no one has been substantially prejudiced by the failure to name the recipients of the notice. I shall therefore exercise the power under s.176(5) to disregard this omission.

8. However, the appellants also allege that part of the site is owned by All Souls' College¹ (the College), and that the College had not been served with a copy of the notice. The Council says that the appellant company is the freehold owner of the whole site. It has submitted a copy of a Land Registry Official Copy of Register of Title in respect of Title No ON221878, the plan attached to which shows that the appellant company is the freehold owner absolute of most of the appeal site. However, the title plan excludes a small area on the northern boundary of the enforcement notice site, and it does not show the southernmost part of the site as falling within the title.
9. Moreover, the appellants say that Certificate B was served when making the application for planning permission, the conditions of which are now in dispute, naming All Souls' College as an owner, and the Council previously issued an enforcement notice in relation to the same site (since withdrawn), and served the College on that occasion. Thus, it seems to me that the Council must have been aware that the College was an owner.
10. Section 172(2) of the Act says that a copy of an enforcement notice shall be served—
 - (a) on the owner and on the occupier of the land to which it relates; and
 - (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
11. Thus, on the balance of probabilities, the enforcement notice was not served on all the owners of the land as required by s.172(2)(a). Once alerted by the appellants about the failure to serve the notice on the College, there is no evidence that the College was subsequently notified about the existence of the notice, and therefore may be unaware of it. The College has played no part in the appeal
12. The Council makes the point that even if the College is an owner, it is the appellant company that has control over the entirety of the appeal site. Whilst that may be so, s.179(2) of the Act imposes criminal liability on an owner of land for the failure to comply with an enforcement notice in certain circumstances. In view of the potential for penal sanction, as well as other liabilities under the Act, I consider that I am unable to use the powers under s.176(5) to overlook the omission in this case, as the College could be substantially prejudiced by the failure to serve the notice on them.
13. Accordingly the appeal on ground (e) succeeds and the notice will be quashed.

Appeal on other grounds

14. As the appeal on ground (e) succeeds, it is unnecessary for me to deal with the other grounds of appeal, as the notice is quashed.

Conclusion

15. The appeal succeeds on ground (e) and the notice is quashed.

JP Roberts

INSPECTOR

¹ More formally, the College of the Souls of All Faithful People Deceased in the University of Oxford.