



Appeal Decision

Site visit made on 4 November 2019

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2019

Appeal Ref: APP/E3525/C/18/3217193

Land adjacent Mill Road, Pakenham, Suffolk

- 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 William Stocks against an enforcement notice issued by St Edmundsbury Borough Council.
 - The enforcement notice was issued on 15 November 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the carrying out of an unauthorised engineering operation to raise the level of the land, comprising the deposition of rubble, hard-core, soil, waste and detritus.
 - The requirements of the notice are to:
 1. Permanently remove from the land edged red all rubble, brick, plastic, waste, hard-core, soil and detritus imported onto the land without planning permission
 2. Restore the land to the condition prior to the development taking place.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)[b] of the Town and Country Planning Act 1990 as amended.
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Reasons

1. An appeal under ground (b) is that the matters alleged have not occurred. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities. The appellant does not claim that materials have not been brought onto the land. His argument is that the materials have been on the site for a period of time and were revealed by the removal of vegetation. However, he also states that rubble has been placed on the site to facilitate the provision of fencing and removal of trees.
2. In relation to the timescale during which the materials which the Council refer to as being imported onto the land, the appeal is not made under ground (d) (that it is too late to take enforcement action) and there is no evidence before me to demonstrate when the material was placed on the site. I am therefore unable to determine that the material has been in place for more than 4 years.
3. The appellant responded to a PCN request and he answered "yes" to question 13 which was "has any rubble, hard-core or other material been brought into the land"? He also admits in his evidence to bringing two lorry loads of rubble onto the site, so as a matter of fact and degree he has imported material onto the land in substantial quantities. The appellant says this was to enable him to stabilise the land so that he could complete fencing and tree surgery. However, the Council have provided photographs of the site showing that it had been completely cleared and covered in soil and rubble. The photographs clearly

show the land levels straining against the boundary fences and the Enforcement Officer calculates at least 277m³ of material has been dumped to a depth of 30cm. I have no evidence to cast doubt on these photographs or any credible alternative explanation and so on the balance of probabilities I consider the allegation is correct.

4. The only issue I have is that I do not consider this to be an engineering operation, as it was simply a matter of clearing the land and dumping material from a lorry which falls under "other operations" in s55(1) of the Act. I shall correct the allegation to delete the word "engineering". This is merely a technical change which I do not consider prejudices either of the parties.
5. I conclude that, on the balance of probabilities, material has been imported onto the site which resulted in an increase in the level of the land, which amounts to an operation for which planning permission is required.

Conclusion

6. For the reasons given above, I conclude that the appeal should be dismissed, and the enforcement notice upheld.

DECISION

7. The enforcement notice is corrected by deleting the word 'engineering' to read 'Unauthorised Operation'.
8. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Sarah Dyer

Inspector