



Appeal Decision

Site visit made on 13 January 2020

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 27 January 2020

Appeal Ref: APP/P1615/C/18/3216272

Land adjacent to Boseley Court, Blaisdon Road, Westbury On Severn, Gloucestershire GL14 1LT

- 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 Harley Phelps against an enforcement notice issued by Forest of Dean District Council.
 - The enforcement notice was issued on 16 October 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of 2 large hardstandings and the material change of use of the land to a storage yard.
 - The requirements of the notice are:
 - i) Cease the use of the land as a storage yard immediately.
 - ii) Remove all plant/vehicles/equipment and materials from the land.
 - iii) Remove the hardstandings located within the areas as marked with blue hatching on the location plan attached to the notice and restore the land back to its original ground level.
 - iv) After compliance with step (iii) above, seed the regraded area with grass.
 - The period for compliance with the requirements is:
 - i) Step (i): immediately.
 - ii) Steps (ii) and (iii): 3 months.
 - iii) Step (iv) by the next planting season or 6 months whichever is sooner.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.

The Notice

2. As required by s173(9) of the Act the notice purports to specify a period for compliance for each of the requirements. The court¹ has considered whether 'immediately' can be construed as a 'period' and has concluded that it cannot. The judge found that a period must have a start point and an end point. The term 'immediately' does not. The notice therefore fails to specify a period for compliance with requirement (i) set out in the summary details above as

¹ *R (oao Lynes & Lynes) v West Berkshire DC* [2003] JPL 813

required by s173(9) of the Act. The notice is therefore a nullity and without legal effect.

3. There is, on the face of it, a simple and obvious remedy, namely to use the power available under s176(1) of the Act to vary the notice and substitute a true period for compliance, such as one day. It is difficult to see how injustice to either party would be caused by such a variation. However, at paragraph 49 of *Lynes* the judge said:

I am very conscious of the need to avoid technicalities and artificial distinctions when dealing with enforcement notices, but the failure to comply with a basic statutory provision for a valid enforcement notice, such as specification of a period for compliance, cannot be said to be a technicality. An enforcement notice which, on its face, does not comply with such a requirement, is a nullity and therefore incapable of amendment.

4. I must conclude therefore that the notice is a nullity and in these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Brian Cook

Inspector