



Appeal Decision

Site visit made on 13 January 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 30 January 2020

Appeal Ref: APP/T2405/C/19/3232404

Land to the West side of Forest Road, Huncote, Leicestershire

- 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 Clive Harris against an enforcement notice issued by Blaby District Council.
- The enforcement notice was issued on 5 June 2019.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised material change of use of the Land from agriculture to a use for storage of soils, building materials, plant/equipment, and general refuse/waste.
- The requirements of the notice are: -
 - a) Cease the use of the Land for the storage of building materials, soils, logs, timber, bricks, blocks, drainage piping, plant, equipment as well as general waste and refuse.
 - b) Remove all building materials, soils, logs, timber, bricks, blocks, drainage piping, plant, equipment as well as general waste and refuse.
- The period for compliance with the requirements is 30 days.
- 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 (the 1990 Act). Since the prescribed fees have not been paid within the specified period, an appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act have lapsed.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
2. The steps required to remedy the breach should, to ensure clarity, be consistent with the description of the alleged breach. The requirements in this case contain additional items to those cited in the description. Moreover, the additional items are superfluous to the requirements as they are covered by the overall description of the alleged breach. As such, I intend to correct the notice by deleting the wording '*logs, timber, bricks, blocks, drainage piping,*' from both requirements a) and b). I can carry out these corrections without injustice to the parties.

Procedural Matter

3. The appellant initially stated that his appeal only related to the ground (f) appeal. However, when validating the appeal, it was noted that the evidence also related to a ground (g) appeal. The appellant confirmed that he did wish to include a ground (g) appeal and the parties have had a chance to comment on this matter. As such, no injustice would be caused to either party and I have dealt with the appeal on this basis.

The ground (f) appeal

4. The ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
5. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).
6. The Council has not specifically identified which of these purposes it seeks to achieve. Nonetheless, in requiring cessation of the storage use and removal of all the materials associated with that use, it is evident that the Council seeks to remedy the breach.
7. The appellant suggests that the removal of all of the materials/plant stored on the site is excessive as some of them are required for operations associated with his agricultural holding. I acknowledge that the soil could be used to fill in undulations on the land within that holding and that it is possible that the building materials could be used within the developments cited by the appellant if planning permission was granted for them.
8. In any case, I have no evidence to indicate that planning permission has been granted for any of the developments referred to above. Moreover, in relation to the soil the requirements of the notice only entail that it is to be removed from the land. Those requirements do not stop the appellant from using it to fill in undulations on other land within his agricultural holding as part of that removal or after its removal from the land. It was apparent from my site visit that an appreciable amount of material appears to have recently been removed from the land.
9. Furthermore, there is little evidence before me to indicate that the plant/equipment is required for the purposes of agriculture or why it has to be stored on this site rather than other parts of the agricultural holding.
10. In any event, the suggested alternative would not remedy the breach of planning control alleged. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The appeal on ground (f) fails.

The ground (g) appeal

11. That any period specified in the notice in accordance with section 173(9) of the 1990 Act falls short of what should reasonably be allowed. The appellant has not specified what period of time he considers is reasonable. However, he does state that it would have needed to have been after the hay had been cut on his agricultural holding and when the weather permitted. I have little evidence to indicate that 30 days in itself is not a reasonable time to comply with the requirements of the notice. Nevertheless, given the time of year, the winter, I consider that the weather and associated conditions on the site could hamper the removal of materials such as soil.
12. Taking into account all of the above, a reasonable period for compliance would be 90 days and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

13. It is directed that the enforcement notice be corrected by deleting the wording '*logs, timber, bricks, blocks, drainage piping,*' from both requirements a) and b) and varied by the deletion of 30 days and the substitution of 90 days as the period for compliance. Subject to these corrections and variations the appeal is allowed on ground (g) and the enforcement notice is upheld.

D. Boffin

INSPECTOR