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## Appeal Decision

Site visit made on 6 January 2020

**by V Bond LLB (Hons) Solicitor (Non-Practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 January 2020**

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**Appeal Ref: APP/H1840/C/19/3233373**

**Land known as The Old Coal Yard, Windmill Lane, Stoulton, Worcester  
WR7 4RP**

- 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 Premier Building Ventures Limited against an enforcement notice issued by Wychavon District Council.
- The enforcement notice was issued on 13 June 2019.
- The breach of planning control alleged in the notice is failure to comply with condition No 10 of a planning permission Ref 17/01066/FUL granted on 20 September 2017.
- The development to which the permission relates is Demolish existing 2 no. dwellings and erect 2 no. residential dwellings. The condition in question is No 10 which states that:

*Before the first occupation of the development hereby permitted a scheme of landscaping shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include:-*

*(i) a plan(s) showing details of all existing trees and hedges on the application site. The plan should include, for each tree/hedge, the accurate position, canopy spread and species, together with an indication of any proposals for felling/pruning and any proposed changes in ground level, or other works to be carried out, within the canopy spread.*

*(ii) a plan(s) showing the layout of proposed tree, hedge and shrub planting and grass areas.*

*(iii) a schedule of proposed planting - indicating species, sizes at time of planting and numbers/densities of plants.*

*(iv) a written specification outlining cultivation and other operations associated with plant and grass establishment.*

*(v) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.*

*All planting and seeding/turfing shall be carried out in accordance with the approved details in the first planting and seeding/turfing seasons following the completion or first occupation/use of the development, whichever is the sooner.*

*The planting shall be maintained in accordance with the approved schedule of maintenance.*

*Any trees or plants which, within a period of five years from the completion of the planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.*

- The notice alleges that the condition has not been complied with in that there has been a failure to implement the approved landscaping scheme (approved 30 August 2018) in the area where the existing cottages remain (marked 'grass' and which indicates a row of planted fruit trees).
- The requirements of the notice are: Implement the landscaping scheme (as attached [to the enforcement notice]) approved on 30 August 2018 to discharge condition 10 of planning permission 17/01066/FUL.
- The period for compliance with the requirements is 8 months.

- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

**Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.**

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### **The Notice**

1. The heading of the enforcement notice refers to 'operational development' rather than a breach of condition, which was the clear intention of the notice. There are also typographical errors in that the notice refers to the previous planning permission reference as 'W/17/01066/FUL', whereas the appellant submits that the searchable reference should not include the 'W/'. I consider that I can correct these administrative errors without any prejudice.
2. There is also an error in the requirement in paragraph 5 which refers to the approved landscaping scheme '(as attached)' when there would appear to be no such attachment. As the date of the approved scheme is given, there appears to be no doubt over which scheme was approved. I shall correct the notice therefore by the deletion of this wording.

### **Background**

3. The land which is the subject of the enforcement notice benefits from planning permission granted in 2017 under reference 17/01066/FUL (2017 Permission) for two dwellings in replacement for the existing semi-detached cottages on site. No condition was included on the 2017 Permission securing the demolition of the existing cottages and they remain in place.
4. A condition was though imposed (Condition 10) requiring the submission of a landscaping scheme for the approval of the Council and essentially the carrying out of planting and seeding/turfing in accordance with the approved details. Condition 10 is the subject of the present appeal.
5. A landscaping scheme was submitted and approved pursuant to Condition 10 (the Approved Scheme). On the Approved Scheme plan, annotations were made as follows: 'existing cottages to be demolished', with these being marked by a dashed line and the word 'grass' marked on the right hand side cottage. The Council contends that the landscaping scheme has not been implemented as approved in the area where the existing cottages remain (marked 'grass' and which indicates a row of planted fruit trees). The Council considers that this therefore represents a breach of Condition 10.
6. Subsequent to the Approved Scheme being granted approval, the appellant submitted a further scheme under Condition 10 which showed the existing cottages as remaining in place, and landscaping passing around these. This scheme (the Alternative Scheme) was refused. Planning permission was then granted for a live/work unit on the adjacent site. A later application for two additional dwellings in replacement for the existing cottages was refused and is the subject of an ongoing appeal<sup>1</sup>.

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<sup>1</sup> APP/H1840/W/19/3229548

## **The appeal on ground (f)**

### *Purpose of the Notice*

7. The appeal on this ground is that the steps required by the enforcement notice go beyond what is necessary. In considering this ground, it is appropriate to first consider what purpose(s) that requirement is intended to achieve. This enables a proper assessment of whether the steps required are more than is necessary to achieve that purpose/those purposes.
8. Section 173 of the Town and Country Planning Act 1990 as amended (1990 Act) states two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach.
9. With respect to a notice alleging a breach of condition, a remedy to that breach of planning control can properly require the development to comply with the terms (including conditions and limitations) of the relevant planning permission. It appears to me that this is what the notice is seeking to achieve by requiring implementation of the approved landscaping scheme.
10. The appellant submits that the requirement cannot be intended to remedy the breach of planning control on the basis that implementing the Approved Scheme would not technically achieve compliance with Condition 10 as this required planting/seeding/turfing in the first planting/seeding/turfing season following completion or first occupation. However, it seems to me that this line of argument would mean that an enforcement notice alleging a breach of a condition in respect of which the timescale for compliance has passed could only ever be for the purpose of remedying an injury to amenity.
11. This seems unlikely to have been the intention behind the drafting of the 1990 Act. Indeed, section 173(3) of the 1990 Act requires a notice to specify the steps required in order to achieve *wholly or partly* [my emphasis] the purposes referred to above. Thus, the requirement here would *partly* achieve the purpose of remedying the breach of planning control by achieving compliance with Condition 10, save as regards the timescales referred to in that condition.
12. The Council's reasons for issuing the enforcement notice, as detailed in the notice, do refer to matters of amenity. However, a distinction should be made between the reasons for issuing the notice, and the purpose which the notice is intended to achieve. In this case, it is plain that the notice is directed at remedying, at least in part, the breach of planning control.

### *Lesser steps*

13. The appellant seeks to demonstrate that implementation of the Alternative Scheme would be enough to overcome the Council's concerns including those related to the living conditions of neighbouring residents and to the character and appearance of the area.
14. However, there is no ground (a) appeal in this case and the steps required by the enforcement notice are for the purpose of remedying, at least in part, the breach of planning control. In these circumstances, it is not permissible to introduce under ground (f) general planning considerations or arguments in relation to amenity, in the absence of a ground (a) appeal. Thus it is not

appropriate for me to assess the Alternative Scheme submitted by the appellant.

15. As an additional point, much of the appellant's case appears to call into question why it was expedient for the Council to take enforcement action. However, for the avoidance of doubt, expediency is not a matter for an Inspector on appeal.

16. The appeal on ground (f) does not therefore succeed.

### **Conclusion**

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections as outlined above.

### **Formal Decision**

18. It is directed that the enforcement notice be corrected by:

- Deleting the words "OPERATIONAL DEVELOPMENT" in the heading of the enforcement notice and substituting "BREACH OF CONDITION";
- Deleting the phrase "W/" from paragraphs 3 and 4 of the notice; and
- Deleting the wording "(as attached)" in paragraph 5 of the notice.

19. Subject to these corrections, the enforcement notice is upheld.

*V Bond*

INSPECTOR