



Appeal Decision

Hearing Held on 21 January 2020

Site visit made on 21 January 2020

by Mr K L Williams, BA, MA, MRTPI

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

Decision date: 20 February 2020

Appeal Ref: APP/Q3630/C/17/3167246

Land at 4 Aymer Close, Staines-upon-Thames, Surrey, TW18 3NL

- 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 Smith against an enforcement notice issued by Runnymede Borough Council.
 - The enforcement notice was issued on 16 December 2016.
 - The breach of planning control as alleged in the notice is an engineering operation resulting in the raising of land levels including the deposition of material of unknown origin.
 - The requirements of the notice are to:
 1. Cease engineering operations comprising the importation and deposition of all materials on the land edged in red on the plan attached to the enforcement notice.
 2. Remove from the land edged red on the plan attached to the enforcement notice all materials in excess of the land levels indicated by topographical survey drawing no.8532-500-002 dated May 2010 and attached to the enforcement notice as "Topographical survey of the site".
 - The period for compliance with requirement (1) is 1 day. The period for compliance with requirement (2) is 8 months.
 - 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.
 - **Summary of Decision: The appeal fails. The enforcement notice is varied and upheld.**
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Preliminary Matters

1. By letter of 23 January 2020 the appellant withdrew ground (a) of the appeal. It is therefore not considered in this decision and there is no deemed planning application to be determined.

The Appeal Site and Relevant Planning History

2. The appeal site is an extensive area of land to the west of Chertsey Lane. It extends from Norlands Lane in the south and towards Green Lane in the north. Its eastern boundary is close to residential properties, including some on Redwood, Thorpeside Close and Aymer Drive. The land was formerly part of a minerals working site. A watercourse known as the Mead Lake Ditch runs close to its western boundary.
3. In September 2014 planning permission RU.14/0016 was granted on the site. It was for the: *"Change of use of land to agriculture and equestrian following phased restoration of land with imported topsoil. Erection of replacement*

ancillary barn to be used in connection with the land restoration and subsequently for storage of hay and stabling of horses.” That planning permission was not implemented. The land has nevertheless been raised by the importation and deposit of materials. A Joint Statement between the appellant, the Council and the Environment Agency says that the landform as built has raised ground levels by an average of 530 mm across the site.

4. In August 2012 the Environment Agency granted a Flood Defence Consent (SUR-FDC-040) on the land. It was for *“Land raising on land adjacent to 4 Aymer Close, Thorpe, by the importation of soil to raise levels by 300mm following previous land lowering.”*

The Enforcement Notice

5. The site plan attached to the notice includes, in error, some land to the south of Green Lane which was not subject to the alleged unauthorised engineering operation. The Council has provided an amended plan. The notice can be varied to include this amended plan as set out in the Formal Decision without injustice to the main parties.

The Appeal on Ground (f)

6. An appeal on this ground is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity. The purpose of an enforcement notice falls under either section 173 (4) (a) of the Act as amended or under section 173 (4) (b). Section 173 (4) (a) is remedying the breach by *“making any development comply with the terms of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.”* Section 173 (4) (b), on the other hand, is remedying any injury to amenity which has been caused by the breach.
7. In this case, the enforcement notice alleges a breach of planning control by operational development in the form of an engineering operation. The notice requires the cessation of that operation and, at paragraph 5.2, the removal of the materials in excess of the land levels indicated in a topographical survey drawing attached to the notice. It was confirmed at the Hearing that those are the levels of the land before the unauthorised engineering operation took place. On that basis, the purpose of this enforcement notice falls within section 173 (4) (a). It is to restore the land to its condition before the breach took place. This is not a notice with the purpose of remedying any injury to amenity.
8. The Council and the appellant agree that the appeal should succeed on ground (f). They consider that the notice should be varied and upheld. The suggested variations are set out in a Statement of Common Ground. They would not affect the requirement to cease the importation of materials or the 1-day period for compliance with it. Requirement (2) would be replaced by a requirement to *“Re-distribute the soil and material currently on the land in accordance with the levels included within the attached Drawing Number 42432/4001/009 Revision A dated 25/07/19. Any amendments in the detail of the Drawing to be agreed in advance in writing.”* It was agreed by the main parties at the Hearing that the last sentence of this suggested variation would introduce uncertainty and could be omitted. The notice would be further varied to allow a period of 15 months for compliance with requirement (2) as varied.

The Environment Agency does not object to these proposed variations. They are reflected in a Statement of Common Ground and in the Joint Statement of the appellant, the Council and the Environment Agency, dated 26 July 2019.

9. Drawing 42432/4001/009 Revision A shows levels reduced in some parts of the site and increased in others. The scheme would include some lowering of current levels within a margin of nearby houses and near to the Mead Lake Ditch watercourse. The basis for the variation suggested by the main parties is that if the material was redistributed as proposed they consider that there would be no overall increased risk of flooding within the River Thames floodplain, either on the site or off it. The level of flood risk is assessed against a baseline of a 300 mm increase in site levels. That figure is derived from the Environment Agency Flood Defence Consent (SUR-FDC-040) of August 2012.
10. There is also a legal agreement under section 106 of the Act as amended, dated 26 July 2019. A variation to it is dated 31 January 2020. In that agreement the appellant undertakes that, if this appeal succeeds, the deposited soil and material will be redistributed in accordance with drawing 42432/4001/009 Revision A. The agreement also sets out details of how the remediation works would be carried out, including the approach to grading of finished levels. Another part of the agreement limits the future use of the site.
11. Notwithstanding the position of the main parties there are objections from numerous local residents. Many of those objections concern the planning merits of the development, both as it has been carried out and of the scheme now proposed by the main parties. Central to those concerns is the issue of flood risk to properties near to the site, many of which have been flooded in the past. It is also said that, even if the appeal succeeded on ground (f) and the proposed redistribution of material within the site was allowed, a further Environment Agency permit would be required. It is argued that the outcome would therefore remain uncertain. It is suggested also that the section 106 legal agreement would not be effective because it is not in the form of a Deed.
12. The Environment Agency is party to the Joint Statement referred to above. On that basis it is unlikely that, if this appeal succeeded on ground (f), a Flood Risk Activity Permit for the scheme agreed by the main parties would be withheld. The section 106 agreement is a valid legal document. The mortgagee of the property is not party to it, so that they are not bound by its requirements. Nevertheless, if this appeal succeeded the notice would be varied as suggested by the Council and would be upheld. Its requirements would be binding on the current and successive owners. In that context I give little weight to the deficiency in the section 106 agreement.
13. There is no appeal on ground (a) and no deemed planning application for the engineering operations which have been carried out. Nor is the scheme now put forward by the Council and the appellant part of the development alleged. It is a different scheme, both in physical terms and with regard to its likely effect on flood risk. In that context, it is not part of my consideration of the appeal on ground (f) to assess the planning merits of the scheme now proposed. As set out above, the purpose of the notice is to remedy the breach of planning control. The requirement to remove the deposited material goes no further than is necessary to achieve that purpose. It is not an excessive requirement. It is therefore concluded that the appeal should not succeed on ground (f).

The Appeal on Ground (g)

14. The appeal on this ground concerns requirement (2) of the notice, involving the removal of the deposited material. The appellant considers that the 8-month period given for compliance is unreasonably short. He contends that a period of 3 years would be appropriate. He refers to the extent and cost of the necessary works and to the need to obtain Environment Agency consent.
15. Were this appeal to be dismissed it would be open to the appellant to apply for planning permission for the scheme involving re-distribution of the deposited material within the site. The effect of section 180 of the Act as amended is that, were planning permission to be granted for that development, the requirements of the enforcement notice would cease to have effect to the extent that they were inconsistent with that permission. Consent for such a scheme would also be required from the Environment Agency. It would be appropriate for the period for compliance to allow sufficient time for these applications to be made and determined, if indeed they are made. The site is extensive and the volume of materials required to be removed would be considerable. An alternative, authorised, site to deposit the material would have to be identified. Removal operations would also require careful planning, not least to minimise their effect on local residents.
16. Taking these matters into account, the 8-month period for compliance is unreasonably short. However, a period of 3 years would be excessive and akin to a temporary planning permission for a lengthy period. I conclude that the period for compliance should be extended to 15 months.

Overall Conclusion

17. Having regard to the above and to all other matters raised the appeal should not succeed on ground (f). The notice should be varied as set out in the Formal Decision and upheld.

Formal Decision

18. It is directed that the enforcement notice be varied as followed: at
 - i) At paragraph 6.2 by the replacement of the words "eight (8) months" with "fifteen (15) months".
 - ii) By the replacement of site plan attached to the notice with the plan attached to this decision.
19. The appeal is dismissed. The enforcement notice is upheld subject to the variations set out above.

K Williams

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr A Ranatunga	of Counsel.
Mr P Jenkin	Stantec.
Ms Cherry	MJCA Planning Consultancy.

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Ferguson	Enforcement Officer, Runnymede Borough Council.
Mr J Williams	Planning Officer, Runnymede Borough Council.
Mr E Alozie	Legal Services, Runnymede Borough Council.
Mr L Clarke	Flood and Coastal Risk Management Officer. Environment Agency.
Ms C Harrison	Planning Adviser, Environment Agency.

INTERESTED PERSONS:

Mr McNulty	Local resident.
Mr Iliopoulos	Local resident.

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of Drawing 42432/4001/009 Rev A.
2. Signed Statement of Common Ground.
3. Copy of Section 106 Agreement, 26 July 2019.
4. Appellant's legal submissions on the Section 106 Agreement.

DOCUMENTS SUBMITTED AFTER THE HEARING

5. Clyde and Co letter of 23 January 2020.
6. Variation to the Section 106 Agreement, dated 31 January 2020.
7. Amended site plan.



Plan

This is the plan referred to in my decision dated: 20 February 2020

by Mr K L Williams, BA, MA, MRTPI

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