



Appeal Decision

Site visit made on 21 January 2020

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

an Inspector appointed by the Secretary of State

Decision date: 21 February 2020

Appeal Ref: APP/P0430/C/19/3233827

M&S Groundworks (Bishops House), Farnham Lane, Farnham Royal, SL2 3SF

- 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 Martin Stack against an enforcement notice issued by Buckinghamshire County Council.
- The enforcement notice was issued on 28 June 2019.
- The breach of planning control as alleged in the notice is without planning permission, a material change of use of the land, to use as a construction and demolition waste recycling facility (The Unauthorised Use); comprising the importation, deposit, processing and transfer of waste material, storage of plant and machinery associated with the unauthorised use and facilitating operational development (Namely perimeter bunding, gates and any other works facilitating the Unauthorised Use).
- The requirements of the notice are: -
 - Step 1. Cease the use of the Land, outlined red on the attached plan, as a construction and demolition waste recycling facility, so as to cease the use of the land for the following activities; the importation, deposit, processing and transfer of waste material;
 - Step 2. Cease the use of the Land, outlined red on the attached plan, as a construction and demolition waste recycling facility, so as to cease the use of the land for the following activities; storage of plant and machinery associated with the unauthorised use;
 - Step 3. Remove all Plant and Machinery associated with the unauthorised use from the Land outlined red on the attached plan;
 - Step 4. Remove all waste material (Processed and Unprocessed) from the Land outlined red on the attached plan.
 - Step 5. Remove all perimeter bunding from the Land outlined red on the attached plan;
 - Step 6. Remove all gates and any other works facilitating the unauthorised use from the Land outlined red on the attached plan.
- The periods for compliance with the requirements are: -
 - Step 1. – 1 day
 - Step 2. – 12 weeks
 - Step 3. – 12 weeks
 - Step 4. – 20 weeks
 - Step 5. – 20 weeks
 - Step 6. – 22 weeks
- 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).

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. The appellant has raised a number of issues which he considers need clarifying which I consider could reasonably be treated as defects or errors within the enforcement notice.
2. An enforcement notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement, so that the land is restored to its condition before the change of use took place.
3. It is suggested that in relation to Step 6 that the requirement to remove all gates and any other works facilitating the unauthorised use is vague. It is not clear what, if any, other works the enforcement notice is directed at. As such, in this respect the requirement is vague and I intend to correct it by deleting the wording '*and any other works*' from Step 6. As a result, I also consider that it is reasonable to alter the description of the alleged breach to remove the referral to '*any other works*'. Therefore, I intend to delete the wording '*, gates and any other works*' and replace it with '*and gates*' in the description of the alleged breach. I can carry out these corrections without injustice to the Council or the appellant.
4. Step 1 requires, amongst other things, that the use of the land as a construction and demolition waste recycling facility to cease and includes a list of activities - the importation, deposit, processing and transfer of waste material that are to cease within 1 day. I consider that the wording of Step 1 and Step 2 of the requirements could be treated as leading to confusion with regard to ceasing the use of the land as they both require the cessation of that use even though they relate to differing activities associated to that use. To clarify this in relation to Step 1 I intend to delete the wording '*, so as to cease the use of the land for the following activities; the importation, deposit, processing and transfer of waste material*' as I consider that it is superfluous to this requirement. I can carry out this correction without injustice to the Council or the appellant.
5. Furthermore, Step 2 requires the storage of plant and machinery associated with the unauthorised use to cease which duplicates the requirement of Step 3. Therefore, I consider that Step 2 is not required. As such, I intend to correct the enforcement notice by deleting Step 2, it follows that its associated period for compliance would also need to be deleted. I can carry out these corrections without injustice to the Council or the appellant.
6. Steps 3-6 do no more than ensure that the land is restored to its condition before the breach took place by requiring that all waste, plant and machinery, bunding and gates are cleared and removed, following the cessation of the unauthorised use. Compliance with these steps would not be in conflict with Step 1 that requires the use (the unauthorised act of development), to cease.

7. Notwithstanding all of the above, the notice has a logical structure. If read in a straightforward way, and not forensically, the alleged breach is expressed in a manner and form that is understandable. The requirements relate directly back to the unauthorised use and its associated operational development and there are periods for compliance. My conclusion is that the notice tells the recipient fairly what he has done wrong and what he must do to remedy it. Compliance with this test does not rule out the ability to challenge the notice through the grounds available in an appeal including a ground (f) appeal as in this case. For the reasons given above, I conclude that the enforcement notice is valid and that no injustice would be caused by correcting the errors and defects in accordance with my powers under section 176(1)(a) of the 1990 Act.

Procedural Matters

8. The evidence before me refers to the planning merits of the development including the impact of the development on protected species, the living conditions of nearby occupiers and highway safety. However, as there is no appeal on ground (a) as set out in section 174(2) of the 1990 Act and no deemed planning application (ground (a) appeal) for me to consider they are not relevant to my decision. Furthermore, I am not empowered to consider whether or not planning permission should be granted for the development.
9. There are also references to the procedures and processes associated with the approval of a licence on the site by the Environment Agency, a planning application submitted by the appellant and the use of an adjacent site for the processing of waste. However, these matters are not within my jurisdiction and therefore they are not for my consideration in the context of this appeal decision.
10. The occupiers of nearby dwellings requested prior to the accompanied site visit that I view the appeal site from within the grounds of their dwellings. At the site visit I explained to all parties that if I was to carry out this request that all parties should be present or that I could carry out that part of the site visit unaccompanied. The appellant stated that he did not wish to enter the grounds of the nearby dwellings, but the Council's representatives stated that they did wish to enter those grounds. The appellant stated that he had no objection to the Council, the neighbours and their agent from being present when I carried out that part of my site visit. I carried out the site visit on this basis.

The ground (f) appeal

11. 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
12. Having regard to its requirements, the purpose of this notice is to remedy the breach of planning control. As a result, and in the absence of an appeal on ground (a) as set out in section 174(2) of the 1990 Act and a deemed planning application, the power available to me under section 176(1) of that Act only relates to whether the requirements exceed what is necessary to remedy the breach and not the planning merits of the case.

13. I acknowledge that Step 3 requires the remove all plant and machinery associated with the unauthorised use from the land within 12 weeks. Moreover, I have no doubt that it would be beneficial to the appellant to screen the remaining waste soils before it is removed from the site utilising the machinery that could still be on the site within those 12 weeks. However, the suggested alternative would not remedy the breach of planning control alleged and, as stated above, I am not empowered to assess the planning merits of the case and that includes this alternative. I have dealt with the issues relating to the time for compliance associated with the steps in the ground (g) appeal.
14. The breach alleged is a material change of use, but the allegation indicates that operational development, including the perimeter bunding and gates, was undertaken in association with that use. As stated above, a notice directed at a material change of use may require operational development to be undone, provided it was carried out to facilitate that change of use and was ancillary to it and provided it was not undertaken for another lawful purpose.
15. My observations on site indicated that the bunding on the northern boundary of the appeal site appears to have a different landscaping composition on it to that on the bunding to the western and eastern boundaries. I note that the appellant considers that the northern bunding is outside of the land in his control, but the enforcement notice has also been served on the landowners and I have little evidence before me to indicate that this bunding is not within their control. In addition, there is no physical boundary between the area where the unauthorised use appears to have been carried out and the northern bunding. In any event, I have no evidence before me to indicate that the northern bunding was not constructed to facilitate the material change of use, that it is not ancillary to that change of use and that it was constructed for some other lawful purpose. I therefore conclude that the requirement to remove it does not exceed what is necessary to remedy the breach of planning control.
16. In relation to Step 6 there is no dispute that there is only one set of gates on the site and that they were erected to facilitate the unauthorised use. Whilst, the gates do provide security for the site they could be replaced with an alternative boundary treatment that would perform a similar function. The removal of the gates is required to remedy the breach and this part of the requirement is not vague and does not lack precision. Therefore, I do not consider that the requirement in this respect exceeds what is necessary to remedy the breach of planning control.
17. 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

18. 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.
19. The appellant has requested that the time limits are clarified in relation to the points raised in relation to the defects and errors in the enforcement notice. It is likely that the plant and machinery to be used to remove the waste would be the same machinery that had been associated with the unauthorised use. As such, any plant or machinery required to remove the waste and bunding

materials would have to be removed from the site once the 12 weeks cited in relation to Step 3 had expired.

20. However, the waste and bunding would not need to be removed until the 20 weeks cited in relation to Steps 4 and 5 had expired. Whilst, it would appear feasible that any required plant/machinery could be stored elsewhere for those few weeks and brought to the site when required this could lead to additional traffic movements to and from the site. I consider that it is reasonable that the time limits for Steps 3, 4 and 5 are consistent with each other. Consequently, I intend to vary the period for compliance cited in relation to Step 3 from 12 to 20 weeks.
21. The appellant has also stated that he will need to find alternative sites to take the waste and material from the bunding and to physically carry out the requirements around his normal working practices. He has requested that the timescales for Steps 4 and 5 are extended to 40 weeks to also allow for the time of the year, autumn/winter. He has also stated that the timescale for Step 6 would also need to be extended to reflect the timescales of Steps 4 and 5.
22. However, the 20 weeks would now extend to cover the spring. Furthermore, based on the information before me including that submitted by the Council, the time limits associated with Steps 4, 5 and 6 of the enforcement notice appear to be reasonable in this respect and provide an adequate period for the necessary works to be carried out.
23. For the reasons given above I conclude that a reasonable period for compliance for Step 3 would be 20 weeks, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

24. The appeal is allowed in part, on ground g, and it is directed that the enforcement notice be corrected by: -
- Deleting the wording '*, gates and any other works*' and replace it with '*and gates*' from the description of the alleged breach;
 - Deleting the wording '*and any other works*' from Step 6;
 - Deleting the wording '*, so as to cease the use of the land for the following activities; the importation, deposit, processing and transfer of waste material*' from Step 1;
 - Deleting Step 2 and its associated period for compliance;
- And varied by: -
- The deletion of 12 weeks and the substitution of 20 weeks as the period for compliance with regard to Step 3;

Subject to those corrections and variations the enforcement notice is upheld.

D. Boffin

INSPECTOR