
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: 21 February 2020

Appeal Ref: APP/X2410/C/19/3232860

Land adjacent to 229 Fosse Way, Syston, 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 Luke Green against an enforcement notice issued by Charnwood Borough Council.
- The enforcement notice was issued on 7 June 2019.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the Land for the storage of a caravan and associated works including; importation of hardcore for the construction of a hardstanding and driveway, the construction of a concrete block structure for housing the electricity supply, a standpipe and the erection of gates and fencing to the Land.
- The requirements of the notice are: -
 - 1) Cease the use of the Land for the storage of a caravan.
 - 2) Remove the static caravan from the Land;
 - 3) Remove from the Land the concrete block electricity housing and electric supply located in the position marked in green on the attached plan and associated wiring along the driveway area;
 - 4) Remove from the Land the water supply and standpipe and any associated drainage facilities;
 - 5) Remove from the Land the metal fencing and gates in the location marked in blue on the attached plan;
 - 6) Remove from the Land any hardcore and stone that has been deposited;
 - 7) Remove from the Land any arising rubble or materials as a result of carrying out the above requirements and restore the Land to its condition before the breach took place by restoring the post and rail fence and farm gate to the entrance.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended. (the 1990 Act)

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

Application for costs

1. An application for costs was made by Mr Luke Green against Charnwood Borough Council. This application is the subject of a separate decision.

The Notice

2. 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.

3. The appellant's statement of case identifies what he considers are issues with the notice. The appellant considers that elements of the operational development cited within the description of the alleged breach do not require the benefit of planning permission. The Council submits that the operational development enforced against is facilitating the unauthorised use and, because of this, the enforcement notice can require removal of these items even if they could be permitted development in other circumstances.
4. I consider that the description of the breach of planning control at paragraph 3 of the enforcement notice makes it clear that the operational development of importation of hardcore for the construction of a hardstanding and driveway, the construction of a concrete block structure for housing the electricity supply, a standpipe and the erection of gates and fencing is alleged to be in association with the material change of use. 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.
5. The requirement to restore the land to its condition before the breach took place is a common requirement of enforcement notices and the appellant will be best placed to know what that position was. As such I find no ambiguity in its wording.
6. 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 material change of 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.
7. The appellant has stated that he had properly sought advice from the Council including preapplication advice in 2017 and was told that the proposed works were acceptable and that they did not require planning permission. He considers that on the strength of that original advice he has made considerable financial investment in the site and that the Council have been unreasonable by issuing an enforcement notice relating to works that it had said were acceptable. I consider that this can reasonably be treated as an estoppel argument in that the Council's advice could be construed as approval and so they are estopped from issuing the notice.
8. Based on the information before me, there was a meeting on site in 2017 where the appellant and a Council Officer were present. It would appear that the Council Officer advised at that meeting that some works may not require planning permission. Nevertheless, the Council has also stated that the appellant submitted an application for preapplication advice Ref P/17/1408/2 in relation to the use of the land for the siting of two mobile homes in connection with an equine business. He was advised in August 2017 that planning permission was unlikely to be granted for the proposed use.
9. I have been provided with 2 different copies of Temporary Stop Notices under section 171E of the 1990 Act. However, only one is signed and dated and therefore I have taken that copy to be the one issued by the Council in June 2017. It was issued in relation to, amongst other things, the excavation of a wall at

the entrance, laying of hardcore to form a hardstanding and excavations/relevelling of the land. The information before me also indicates that the Council was granted an injunction from the Court that forbid the appellant from, amongst other things, undertaking any further development on the land without the express grant of planning including the erection of any structures and/or installation of utilities, the laying of hardcore and creation of hard standing and/or access roads. However, it is not clear on what date this injunction was granted.

10. The appellant has supplied a copy of a quotation and an invoice in relation to water and electricity supplies being put onto the site. Nonetheless, it is not clear as to whether they were installed prior to the issuing of the stop notice and/or the grant of the injunction.
11. In this case it seems no advice was ever given that the development that forms the alleged breach was permitted development, but even if it was, informal advice from a Council Officer (which the meeting on site would seem to have been) cannot later prevent the issue of an enforcement notice if it is found the development does require planning permission. This is a well-known aspect of planning law and requires no further elucidation here. Furthermore, the Council provided the official pre-application advice, issued the stop notices and were granted an injunction all of which the appellant would have been aware of. In addition, no application was made for a formal decision through sections 191/192 of the 1990 Act. For the reasons given above, I conclude that the enforcement notice is valid as the Council are not estopped from issuing it.

Preliminary Matters and Background

12. The appellant has stated within his evidence that the land is designated for leisure use therefore the storage of a caravan on site does not constitute a material change of use. Nevertheless, the appellant did not initially make an appeal on ground (c), that there has not been a breach of planning control. The appellant was requested to clarify whether he wished to appeal on ground (c) and was given the opportunity to submit evidence in this respect. The appellant in his response stated that he would like ground (c) included in the appeal and he requested that I consider whether there has been a breach of planning control in relation to the services (i.e. water and electric) that have been installed on site. The Council was given the chance to comment on that submission. As such, I have dealt with the appeal on the basis that there is a ground (c) appeal.

The ground (c) appeal

13. In this ground of appeal, the onus of proof is firmly on the appellant to show that the alleged matters do not constitute a breach of planning control, on the balance of probabilities.
14. As stated above the appellant has stated that the storage of a caravan on the site does not constitute a material change of use. However, the only evidence to support that argument is the statement that the land is designated for leisure use. It is not clear from that statement as to whether the appellant considers that the caravan being stored on the site could be treated as being ancillary to the use of the land for a 'leisure' purpose or whether the storage of the caravan has not materially changed the lawful use of the land.
15. I have been provided with a copy of a planning permission, dated 2 April 1986, for the erection of a block of 5 stables, tack room and fodder store on part of

the appeal site. Nevertheless, I have no evidence to indicate that this permission is extant or that this development was commenced/implemented. A number of other planning applications have been submitted by the appellant on the appeal site since 2017 including one for the erection of a club house and associated sports pitches and car park. Even so, I have no evidence to indicate that any of those planning applications have been granted planning permission.

16. The Council have not stated what it considers the lawful use of the site to be. I have little evidence to indicate what the lawful use of the appeal site was prior to the alleged breach occurring and it is not for me, as part of this appeal, to determine what it is. To that end it is open to the appellants to apply for a determination under sections 191/192 of the 1990 Act in that respect.
17. When considering whether a change of use is material, the question is whether there is some significant difference in the character of the activities undertaken as a matter of fact and degree. There is no dispute that when the notice was issued that a caravan was being stored on the land. There is no evidence before me to indicate that the caravan is being stored on the land for a purpose that could be ancillary to a lawful use of that land. In addition, there is no evidence to indicate why the character of the activities associated with the storage use are not significantly different to that associated with the lawful use of the land. In conclusion, the appellant has not provided sufficient evidence to persuade me, on the balance of probability, that the alleged breach of planning control does not constitute a material change of use of the land for the purposes of section 55 of the 1990 Act.
18. As stated above, an enforcement notice directed at a material change of use may require operational development to be removed, 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.
19. I acknowledge that the installation of water and electricity supplies can be 'permitted development' by virtue of Schedule 2, Part 13, Class A and Part 15, Class B of the The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) subject to conditions and limitations and that it could be possible to utilise them for a future use of the site. However, I have no evidence before me to indicate that any of the operational development, covered by the enforcement notice, was not constructed/installed to facilitate the material change of use or that it is not ancillary to that change of use. In addition, I have no information before me to indicate that it was installed/constructed for some other lawful purpose.
20. On the balance of probabilities, express planning permission is required for the making of a material change of use of the land for the storage of a caravan and the associated works including, amongst other things, the installation of water and electricity supplies to facilitate that change of use. It has not been obtained. I find that the matters alleged constitute a breach of planning control. Therefore, ground (c) fails.

The ground (a) appeal and deemed planning application

Main Issues

21. The main issues are: -

- The effect of the development on the character and appearance of the area;

- Whether the site is a suitable location with regard to development plan policies and the National Planning Policy Framework (the Framework) on rural areas and flood risk.

Reasons

22. The development plan includes the Charnwood Local Plan 2011-2028 Core Strategy (2015) (CS) and the saved policies within the Charnwood Local Plan 1991-2006 (2004) (LP).
23. The Council have stated that the site is outside of the limits to development and within an area defined as countryside for the purposes of LP Policies ST/2, CT/1 and CT/2. LP Policy ST/2 states that built development will be confined to land within limits of development identified on the Proposals Map. The supporting text of the policy states that the limits ensure that development needs can be met without unwarranted harm to the countryside.
24. LP Policy CT/1 seeks to strictly control development in the countryside and lists a number of small-scale new built developments that are acceptable in the countryside where there would not be a significant adverse environmental impact. LP Policy CT/2 requires development that is acceptable in principle, in areas defined as countryside, not to harm the character and appearance of the countryside.
25. LP Policy EV/1 and CS Policy CS2 state, amongst other things, that the Council will seek a high standard of design and developments to respect and enhance the character of the area. CS Policy CS11 states, amongst other things, that the Council will support and protect the character of its countryside by requiring new developments to protect landscape character and to reinforce sense of place.
26. CS Policy CS16 relates to sustainable construction and energy and seeks, amongst other things, to support developments which take opportunities to reduce flood risk elsewhere.

Character and appearance

27. The appeal site comprises a largely undeveloped piece of land that is adjacent to Fosse Way. There is a watercourse adjacent to the north-western boundary of the site and a cricket club and its grounds are on the other side of that watercourse. There are fields/paddocks to the north and south of the site and on the opposite side of Fosse Way there is a sailing club. The boundaries of the site are largely formed of hedgerows and trees and there is an access track to the south of the site. However, the southern boundary also has a tall fence along it which is mainly constructed of solid metal sheeting. At the entrance to the site there is timber fencing and gates.
28. Even though the site is relatively close to the settlement of Syston it is within the countryside that surrounds that settlement. I observed that the landscape around Syston, in the immediate vicinity of the appeal site has a generally level topography dominated by agricultural and recreational land uses. Hedgerows and trees within the appeal site and the surrounding area contribute to the fairly enclosed nature of the landscape and limit views.
29. Whilst I acknowledge that the caravan is presently being stored close to the north western boundary it could be moved to a more prominent location close to the boundary with Fosse Way. In any case, although screened to a degree by the existing fencing, gates, hedgerows and trees, the top of the caravan is

visible above the gates/fencing and it is also visible through the landscaping especially when it is not in full leaf. The simple functional form of the caravan, together with the light-coloured panelling of its surface, serve to draw the eye as an incongruous feature within its rural surroundings.

30. The fencing along the southern boundary has been erected behind the hedgerow and further landscaping measures could be controlled by planning conditions if I was to minded to allow the appeal. However, the metal fencing is and would be likely to still be visible from Fosse Way. Moreover, the timber fencing and gates at the entrance are prominent in views from Fosse Way. The height, materials and solid form of the metal and timber fencing and the gates do not reflect the rural character of the area within which they are located as this design and form of gates and fencing is more commonly found in an urban environment. I conclude that even though the impact of the development is localised in nature this urbanising impact appears incongruous and discordant in this rural location and this harm cannot be mitigated by imposing planning conditions.
31. The appellant considers that the fencing and gates are necessary to secure the site. However, other forms of fencing and gates that would be more in keeping with the rural character of the area could also provide the required level of security.
32. In conclusion the development harms the character and appearance of this part of the countryside. It follows that it is contrary to LP Policies ST/2, EV/1 and CT/2 and CS Policies CS2 and CS11.
33. With regard to paragraph 213 of the Framework I consider that these policies are broadly consistent with paragraphs 127 c) and 170 b) of the Framework and as such the conflict with those policies, in these respects, has significant weight.

Suitable location

34. I have no evidence before me to indicate that the development meets any of the criteria i) through to iv) of LP Policy CT/1 relating to small scale new built development. Even though the site is within close proximity to Syston there are fields and paddocks between the edge of the settlement and the site. As such, the site cannot be reasonably be considered as being adjacent to the settlement. It has not been demonstrated why the development could not reasonably be located within or adjacent to an existing settlement. It follows that the development conflicts with this policy. However, this policy is based on previous national policy where the emphasis was on the need to protect the countryside for its own sake. As a result, that conflict has limited weight taking into account paragraph 213 of the Framework.
35. The Council have stated that the appeal site is within Flood Zones 3a and 3b. However, the appellant has stated that he has maintained the ground levels and that the improvements to the access and the hardstanding has not been extended into the site where there is potential for flooding.
36. The photographic evidence before me indicates that materials have been imported onto the site and that at least parts of the site and large parts of the surrounding area are liable to flood. Paragraph 163 of the Framework states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. CS Policy CP16 reflects and is consistent with the Framework in this respect. Furthermore,

footnote 50 of the Framework states that a site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3.

37. I observed that there are piles of soil and other material on the appeal site and that parts of the site appear to have consolidated hardcore on them and other parts have deep ruts which appear to have been made by machinery moving over the site. I cannot be certain, based on the evidence before me, that the ground levels on the site have not been altered. Moreover, there is no technical evidence, such as a site-specific flood risk assessment, to demonstrate that flood risk has not been increased elsewhere due to the development that has been carried out. In my experience, given the proximity of the water course and the evidence before me I consider that it is likely that the development could have increased the risk of flooding elsewhere. A planning condition requiring the submission of a site-specific flood risk assessment would not be reasonable as it could nullify a planning consent.
38. I acknowledge that in 1986 planning permission was granted for a stable block with an advisory note relating to the floor levels of the proposed buildings even though it was noted that the site was subject to flooding. However, that planning permission was granted under previous local and national planning policy regimes. As such, it is not directly comparable to the case before me. In any case, I am required to determine the appeal before me on its individual circumstances.
39. Taking into account all of the above I do not consider that it has been demonstrated that the development does not increase the risk of flooding elsewhere. It follows that it conflicts with CS Policy CS16 and paragraph 163 of the Framework. Given all of the above, I do not consider that it has been demonstrated that the site is a suitable location for the development in these respects.

Other matters

40. The references to other development plan policies have been noted. However, the development plan policies to which I have referred are considered the most relevant to this appeal.
41. I appreciate that the appellant undertook the works in good faith and did not seek to flout the planning regulations. However, this point has not affected my decision, which is based on the planning merits of the development.
42. I accept that the Council have not raised any objections to the development in relation to highway safety. However, the absence of harm is a neutral consideration and does not weigh for or against the development.

Conclusion on ground (a) and the deemed planning application

43. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

The ground (f) appeal

44. 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.

45. 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)).
46. The Council has not identified which of these purposes it seeks to achieve. Nonetheless, in requiring the cessation of the use and removal of all of the stated items associated with that use it is evident that the Council seeks to remedy the breach.
47. As stated above, an enforcement notice directed at a material change of use may require operational development to be removed, 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.
48. However, I have found within the ground (c) appeal that I have no evidence before me to indicate that any of the operational development, covered by the enforcement notice, was not constructed/installed to facilitate the material change of use or that it is not ancillary to that change of use. In addition, I have no information before me to indicate that it was installed/constructed for some other lawful purpose.
49. I note that the appellant has stated that the electricity and water supply were installed by the relevant statutory undertakers to meet their regulations and that they were installed at a financial cost to the appellant. He also considers that their complete removal together with the removal of the fencing/gates and hardstanding would prevent him from using the site for any future use and would leave the site unsecure.
50. I acknowledge that it may be possible to utilise the operational development for a future use of the site. However, the enforcement notice requirements cannot be based on uncertain future events and there is no guarantee that the proposal for the erection of a club house and associated sports pitches and car park will be granted planning permission. Moreover, I have considered the security of the site as part of the ground (a) appeal.
51. There are no lesser steps which could be taken to resolve the alleged breach. 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.

Overall Conclusion

52. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

53. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

D. Boffin

INSPECTOR