



Appeal Decision

Site visit made on 21 January 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 March 2020

Appeal Ref: APP/R4408/C/18/3218004

Land off Willow Bank, Barnsley S75 1BN

- 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 Wayne Hadfield against an enforcement notice issued by Barnsley Metropolitan District Council.
 - The enforcement notice was issued on 7 November 2018.
 - The breach of planning control as alleged in the notice is without Planning Permission: The importing of significant amounts of earth material to the land including works to alter the profile of the land ('The Unauthorised Works'). The works being undertaken constitute engineering or other operations under section 55 of the Town and Country Planning Act 1990, for which planning permission is required. The Council also considers the works are a material change of use of the land and no planning permission has been granted for the operations which are taking place.
 - The requirements of the notice are:
 - (i) Cease the unauthorised change of use of the land, and;
 - (ii) Remove the imported material which has been deposited onto the land, ensuring the land is returned to its original profile and condition prior to the unauthorised works taking place.
 - The period for compliance with the requirements is:
 - (i) For the requirement specified in (i) above – One Month from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.

Preliminary Matter

2. I had noticed the defect in the enforcement notice in respect of the lack of compliance period for the operational development and the Council were given an opportunity to withdraw the notice. The Council in their response stated that the notice could be corrected by the insertion of a period of compliance and on this basis saw no reason to withdraw the notice. I have therefore continued to determine the appeal.

Reasons

3. Section 173 of the Act and the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 set out what a notice shall

- include. S173(9) states that an enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.
4. The enforcement notice relates to both operational development and a material change of use. The Council in section 5 of the notice set out the steps required to comply with the notice. As set out in the banner heading above 5(i) requires the use to cease and 5(ii) the materials to be removed and the land returned to its condition prior to the unauthorised works taking place.
 5. The notice at 6(i) (timescales for compliance with the enforcement notice) requires the use specified in part 5(i) to cease one month from the date the notice takes effect. No period for compliance is specified in respect of (5)(ii) the operational development. It is therefore apparent on the face of the notice itself that it does not comply with s173(9) of the Act.
 6. Defects in enforcement notices fall into two main categories: those that make it a nullity and those that may make it invalid. In the former there is in effect no notice at all and therefore nothing that can be corrected or, indeed, form the basis of an appeal.
 7. In the case of *Payne*¹ the Inspector found that the notice did not comply with s173 because requirement (f), which related to the submission to the local planning authority for approval, a scheme relating to levelling and planting, was uncertain on its face. The judge said that he was '...quite unable to say that the Inspector erred in law in reaching such a conclusion.' The Inspector's error was to then go on to vary its terms to correct the defect. This was wrong because he had no power to do so because the notice was a nullity.
 8. In accordance with *Payne* in this case, as the enforcement notice fails to specify a period of time within which the second requirement of the notice should be complied with, this renders the enforcement notice a nullity as it does not comply with s173(9).
 9. Therefore, although the Council suggested that I could correct this error by inserting a period for compliance, to do so having found that the notice does not comply with s173(9) in that regard would be directly contrary to *Payne* and wrong in law.
 10. However, the Council, by virtue of section 171B(4)(b) of the 1990 Act is not precluded from taking further enforcement action in respect of this matter.

Other Matters

11. Even if as the Council suggested those powers under s176 were available it is not clear from the submitted evidence and the Council did not suggest what would be a reasonable time period for compliance with requirement 5(ii). I would have therefore been second guessing what a reasonable period would be. The appellant would have had no right of appeal under ground (g) in

¹ *Payne v National Assembly for Wales* [2006] EWHC 597; [2007] 1 P. & C.R. 4

respect of any time period I were to impose and as such this would have caused him injustice. Further, the Council in the allegation say that there has been a material change of use but fail to state the nature of that change.

12. In addition, I note that in section 4 of the notice the Council refer to four years in respect of the relevant period for immunity from enforcement action. However, in respect of the material change of use this should be ten years.

Conclusion

13. I conclude that the notice is a nullity. In these circumstances, the appeal on the grounds set out in section 174(2)(c) and (f) of the 1990 Act as amended do not fall to be considered.

Felicity Thompson

INSPECTOR