



Appeal Decision

Site visit made on 14 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/X4725/C/19/3229427

Land at junction of Weeland Road and West Lane Sharlston Common

- 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 David Crowther against an enforcement notice issued by Wakefield Metropolitan District Council.
- The enforcement notice was issued on 26 April 2019.
- The breach of planning control as alleged in the notice is without planning permission, unauthorised material change of use to use for the stationing of a touring caravan for storage purposes, a large plastic tank container and associated unauthorised operational development including the erection of fencing enclosures over one metre in height.
- The requirements of the notice are:
 - 1) Cease the use of the Land for the stationing of the caravan and large plastic storage container.
 - 2) Remove from the Land the caravan and large plastic storage container.
 - 3) Remove all fencing enclosures on part of the public highway verge (West Lane) and part of the private service access road.
 - 4) Remove from the Land all fencing materials.
 - 5) Remove from the Land all excavated scrap materials and construction/rubble materials and tree and hedge cuttings.
 - 6) Re-spread soil and level the land to restore the Land as near as practical to its condition before the breach took place.
- The period for compliance with the requirements is 28 days.
- 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

FORMAL DECISION

1. It is directed that the enforcement notice is corrected by the deletion of the word 'including' in the allegation and its substitution with the words 'consisting of'. Subject to this correction, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

2. The breach of planning control alleged in the notice refers to both a material change of use and operational development. In respect of the operational development the allegation contains the word 'including' with regard to the fences. However, there is nothing either within the reasons for taking action or the Council's evidence to indicate that the notice is directed at operational development other than the erection of fences. Consequently, I shall delete the

word 'including' and replace it with the words 'consisting of' in the interests of clarity.

3. Whilst ground (g) has not been pleaded, the appellant nevertheless makes submissions on the matter in respect of the removal of tree and hedge cuttings and I have therefore addressed them as though that ground was pleaded. Such submissions were made in the appellant's appeal form upon which the Council had the opportunity to comment and as such there would be no injustice to the Council.

The ground (c) appeal

4. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. Whilst it was evident at my site visit that the appellant has, since the notice was issued, complied with some requirements, the appropriate time period for the consideration of a ground (c) appeal is at the time when the notice was issued and when the appeal is determined.
5. The appeal site consists of a roughly triangular shaped area of grass land bordered on two sides by public highways with one side fronting a private access drive. Photographs submitted as evidence show the land to have the appearance of amenity land with some car parking taking place on the edges of the land with the access drive.
6. It is evident from the appellant's response to a Planning Contravention Notice (PCN) issued by the Council prior to issuing the enforcement notice, that a caravan was brought onto the land as a tool store and place for workers on the land to shelter in adverse weather whilst they were working on the land to remove fly tipping.
7. The use of the land for the stationing of a caravan for storage purposes and a large plastic tank container is development which requires planning permission. Other than to state that the caravan and large plastic tank container have been removed, the appellant has not sought to offer views on why they consider that they did not constitute a breach of planning control.
8. The appellant stated that works to the land have included levelling works, the removal of fly tipping and waste, the planting of saplings which will form a new hedge and the erection of a fence, on the highway side with West Lane, to protect the saplings whilst they become established. The appellant does not dispute the height of this fence, but states that it is temporary fencing which is intended to be removed once the saplings are established and the hedgerow is growing stronger.
9. A further fence has been erected on the side of the land adjacent to the private access road, the appellant states that this constitutes permitted development as it does not exceed one metre in height.
10. The erection of a gate, fence, wall, or other means of enclosure can be permitted development under Article 3, Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, other than in the case of schools, the erection of a gate, fence, wall, or other means of enclosure over 1m in height, which is 'adjacent'

to a highway used by vehicular traffic, is not permitted development and planning permission is required for such a development.

11. Whether or not the fence adjacent to West Lane is temporary, I find it measures over 1m in height adjacent to a highway used by vehicular traffic and consequently does not constitute permitted development.
12. The private service access road is used by vehicular traffic. At my site visit the appellant and Council measured the height of the fence at various points along its length. The appellant considered that the height of the fence should be measured from within the land, taking measurements from the top of sleepers to which the fence is attached. However, when measuring the height of a fence, the height above ground level should be given its ordinary meaning.
13. When measured from natural ground level, in this case from the access road, the fence varies in height from around 1.08m to 1.10m. Consequently, the fence is over 1m in height and does not constitute permitted development.
14. Overall, on the basis of the evidence before me I conclude that a material change of use consisting of the use of the land for the stationing of a touring caravan for storage purposes and a large plastic tank container and, operational development consisting of the erection of fences has occurred. The appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The developments are not development that is permitted by any development order and there is no record of planning permission having been granted for them. The appeal on ground (c) therefore fails.

The appeal on ground (f)

15. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the use of the Land for the stationing of the caravan and large plastic storage container to cease, the fences and all associated materials and debris to be removed and the land returned to its former condition, I find the purpose is to remedy the breach of planning control.
16. That purpose can only be achieved by restoring the land to its condition before the breach took place, no lesser steps would remedy the breach of planning control and in this respect the requirements of the notice are not excessive.
17. The appellant has suggested a lesser step of altering the fences to an agreed limit and other submissions that fall to be considered under a ground (a) appeal, matters which relate to planning merits.
18. However, where there is no appeal under ground (a) consequently there is no deemed application for planning permission, as such there can be no arguments about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purposes.
19. Since the purposes of the notice are to remedy the breach of planning control which has occurred, no lesser steps other than those set out in the notice would achieve those purposes. Therefore, the appeal on ground (f) fails.

The appeal on ground (g)

20. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that they would like the tree and hedge cuttings to remain on the land until the bird nesting season finishes as birds have nested in them but have provided no suggested timescale.
21. Given the small amount of tree and hedge cuttings remaining and as there is no substantive evidence that birds are currently nesting, I find no reason to extend the period for compliance in respect of the removal of tree and hedge cuttings. The appeal on ground (g) therefore fails.
22. The Council have powers under s173A(1)(b) to extend any period for compliance, without prejudicing their right to take further action. However, this is a matter entirely at the discretion of the Council.

Other Matters

23. Matters have been raised concerning the reasons why the fences have been erected however, these concern the planning merits of the proposal but have no bearing on whether the fences are lawful.
24. Significant representation has been made about legal rights of access and land ownership. However, this determination cannot take into account private legal matters concerning the interests of one neighbour or landowner against another. This decision is based solely upon 'planning' law.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Felicity Thompson

INSPECTOR