
Appeal Decision

Site visit made on 18 February 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2020

Appeal Ref: APP/N4270/C/19/3238076

Land to north east of Wensley House, 16 Wensley Drive, Chapel Allerton, Leeds LS7 3QW

- 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 Graham Hogg against an enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 6 September 2019.
- The breach of planning control as alleged in the notice is without planning permission the change of use of vacant land to laying out of two car parking spaces.
- The requirements of the notice are; remove all hardstanding materials including gravel or hardcore from the site and restore the land by reinstating adequate topsoil and replanting grass and shrubbery so that the area cannot be used for parking vehicles. Maintain the new planting scheme and replace any shrubs/trees or grass which die within 3 years of planting.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (g) 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 and variations in the terms set out below in the Formal Decision.

FORMAL DECISION

1. It is directed that the enforcement notice is corrected and varied by:
 - (1) The deletion of the text in section 3 of the enforcement notice, the matters which appear to constitute the breach of planning control, in its entirety and the substitution with the following text: *without planning permission the material change of use of vacant land to laying out and use for two car parking spaces.*
 - (2) The deletion from section 5 of the enforcement notice of the word "adequate" and the requirement to "maintain the new planting scheme and replace any shrubs/trees or grass which die within 3 years of planting".
2. Subject to the correction and variations above, the appeal is dismissed, and the enforcement notice is upheld.

The Notice

3. The allegation is inaccurate in respect of referring to the change of use to laying out of two car parking spaces as opposed to the laying out and use of land for two car parking spaces, but the appellant clearly understood the intent

behind the issued notice. On the basis of the appellant's submissions it is evident that they are not in any doubt as to what is being enforced against. Furthermore, it is evident from section 4 of the notice, the reasons for issuing the notice, that the allegation relates to a material change of use and the Council correctly refer to the ten-year immunity period. Having regard to s176(1) of the Act, I am content that the correction would cause no injustice to any party and I shall therefore correct the allegation.

4. In section 5 of the enforcement notice, the notice requirements include the restoration of the land with adequate topsoil and maintenance and replacement of the new planting scheme. The requirement to reinstate adequate topsoil lacks precision as there is no definition of what 'adequate' means. Further, the maintenance requirement is a continuing requirement and is insufficiently precise to amount to 'steps' to be taken within a 'period' as the legislation requires (subsections 173(3) and 173(9) of the Act) and so I shall vary the notice by deleting the word 'adequate' and the second paragraph of section 5 in its entirety.

The appeal on ground (g)

5. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
6. The reasons for issuing the enforcement notice relate to harm to highway safety. I have had regard to the planning history and note that the appellant has previously submitted two planning applications to the Council, both retrospective although the second proposed some improvements, for the formation of two parking spaces, references 17/05912/FU and 19/00896/FU. However, both applications were refused by the Council and subsequently dismissed on appeal¹ for reasons relating to unacceptable harm to highway safety.
7. The appellant's case is that they would like to extend the compliance period to six months. This is on the basis that they are endeavouring to address the Council's reasons for taking enforcement action via the submission of a new planning application which involves negotiations in respect of obtaining a right of way over land not in the appellant's ownership.
8. There is no appeal on any other ground other than ground (g), and therefore it has been virtually inevitable since the appeal was lodged that the enforcement notice would be upheld. Notwithstanding matters about land ownership, there has been nothing to prevent the appellant from making an application for planning permission for a revised scheme. However, there is no evidence to indicate that any such application has been made or that the appellant has been in discussion with the Council about a further revised scheme. Therefore, there is no indication about the likelihood of success of such a scheme.
9. Whilst I understand the appellant's position, it is necessary to weigh the competing private interests of the appellant to retain the parking spaces and the public interest in respect of highway safety. The use enforced against is causing harm to highway safety and significant weight must be attached to this harm. Such harm should not be permitted to continue for any longer than absolutely necessary.

¹ APP/N4270/W/18/3207561 & APP/N4270/W/19/3229431

10. On the basis of the evidence before me and my own site observations it seems there would not be a significant amount of work involved in removing the hard standing and restoring the land.
11. Overall, on the basis of the above and given that the use has been ongoing for some time, with the first retrospective planning application for the development being refused and dismissed on appeal in October 2018 and the need to bring this harmful development to an end, I consider 28 days to be a reasonable period for compliance. The appeal on ground (g) therefore fails.

Conclusion

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

Felicity Thompson

INSPECTOR