
Appeal Decision

Site visit made on 25 February 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2020

Appeal Ref: APP/D0650/C/19/3236319

Land at Factory Lane lying to the east of Peel House Lane, Widnes

- 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 Ruabin Price against an enforcement notice issued by Halton Borough Council.
- The enforcement notice was issued on 9 August 2019.
- The breach of planning control as alleged in the notice is the importation of material to form the creation of a hardstanding.
- The requirements of the notice are:
 - 5.1 Cease the importation of material to form a hardstanding;
 - 5.2 Cease the importation of top soil that is covering the area of hardstanding;
 - 5.3 Remove the imported top soil that is covering the area of hardstanding and lawfully dispose of off-site;
 - 5.4 Remove the membrane located on top of the area of hardstanding and lawfully dispose of off-site;
 - 5.5 Remove the hardstanding from the Land and lawfully dispose of the resulting waste material off-site.
- The period for compliance with the requirements is:
 - 6.1 With respect to 5.1 above within 1 day;
 - 6.2 With respect to 5.2 above 1 day;
 - 6.3 With respect to 5.3 above 28 days;
 - 6.4 With respect to 5.4 above 28 days;
 - 6.5 With respect to 5.5 above 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), b), (e) 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 variations.

Application for costs

1. Applications for costs were made by Mr Ruabin Price against Halton Borough Council and by Halton Borough Council against Mr Ruabin Price. These applications are the subject of a separate Decision.

The Enforcement Notice

2. The appellant agrees that the requirements of the notice are self-explanatory, but they require the appellant to cease the importation of top soil and remove the imported top soil that is covering the area of hardstanding. It is contended that there has been no importation of top soil nor has any top soil been deposited on the area of hardstanding as a matter of fact. Therefore, he argues that the factual basis of the notice should be precise enough at the time

- of service, so that all parties with an interest in the land can take reasonable steps to carry out the requirements of the notice.
3. S173(2) of the Act says that a notice complies with s173(1) if it enables any person on whom a copy of it is served to know what those matters are. Case law¹ states that the test in deciding whether an enforcement notice satisfies the statutory requirement must be "Does it tell him fairly what he has done and what he must do to remedy it?". In this case, the allegation in the notice is very clear and there does not appear to be a dispute between the parties that a breach has occurred. However, there is some confusion with reference to the requirements.
 4. The evidence before me and my own observations on site show that there has been no importation of top soil. However, the area of hardstanding does occupy the land and appears to comprise a base of building rubble and other imported waste material, a membrane and a topping of motorway shale (as described by the appellant).
 5. Where the requirements of a notice are modified it is appropriate to vary the terms of the notice. The powers in s176(1) extend to making significant changes to the terms of the notice to provide an accurate description of the alleged breach as a basis for determining a deemed planning application or formulating specific requirements. Inspectors can make changes subject only to ensuring that a correction or variation does not cause injustice to the appellant or the local planning authority. A variation which enlarges the scope of the requirements may well cause such injustice. This is likely to be the case if, as a result of the variations made, the appellant ends up in a worse position than if there had been no appeal.
 6. The Council is of the opinion that the requirements set out in paragraph 5.3 of the enforcement notice should be deleted along with the corresponding requirement at paragraph 6.3. I agree that these can be deleted without causing injustice. However, paragraph 5.2 of the notice also refers to ceasing the importation of top soil that is covering the area of hardstanding. Since that has not occurred as a matter of fact it is my view that this should also be deleted along with corresponding requirement 6.2. Furthermore, requirement 5.4 should also be varied since the membrane is not located on top of the area of hardstanding but rather is an integral part of the construction of the area of hardstanding.
 7. The variations to the notice as described above would leave the requirements to cease the importation of material to form a hardstanding, remove the membrane and remove the hardstanding from the Land. These are effective requirements to remedy the breach of planning control as described in the notice as the importation of materials to form the creation of a hardstanding. Importantly, as well as remedying the breach of planning control, they do not cause injustice to the appellant because he does not end up in a worse position than if there had been no appeal.

The appeal on ground (e)

8. The ground of appeal is that the notice was not properly served on everyone with an interest in the land. The appellant's criticism is that not all those who

¹ Miller-Mead v MHLG [1963] 2 WLR 225

have a legal interest in the land have been served with a copy of the enforcement notice. The appellant did receive a copy of the notice, but it is my understanding that he is not the only person with a legal interest in the land.

9. The requirements relating to the service of an enforcement notice in S172(2) of the Act provide that an enforcement notice shall be served on the owner and occupier of the land to which it relates and on any other person having an interest in the land, being an interest which in the opinion of the authority is materially affected by the notice. Furthermore, S176(5) of the Act states that if a person who was required to be served was not served, that fact may be disregarded if neither the appellant nor the person required to be served has been substantially prejudiced by the failure to serve.
10. The appellant owns the appeal site but contends that tenants did not receive the enforcement notice. Although the appellant has not provided specific evidence that others have an interest in the land, such as tenancy agreements for example, I do not dispute that others are materially affected by the notice and should have received a copy. However, it is clear to me that tenants have been informed of the Enforcement Notice. One of the tenants attended the site visit, for example. Therefore, in this particular case no prejudice has been demonstrated by the Council's failure to serve.
11. Section 174 of the Act identifies the rights of appeal for relevant occupiers and interested parties. Tenants would qualify under s174 of the Act to make an appeal against the Notice. However, although it is my understanding from the appellant's evidence that the appellant has informed them of the enforcement notice and the appeal process, only one of the tenants has chosen to provide written comments to confirm interest in the land.
12. On the grounds that there is insufficient evidence that the Council's failure to serve the notice has substantially prejudiced those with an interest in the land, the appeal on ground (e) fails.

The appeal on ground (b)

13. The ground of appeal is that the breach of control alleged in the enforcement notice has not occurred. In order to succeed on this ground it would need to be demonstrated that the importation of material to form the creation of a hardstanding as alleged has not taken place on the land. The appellant contends that some of the matters have not occurred.
14. Although there remains a dispute regarding the composition of the area of hardstanding there is no dispute that there has been a breach of planning control on the site. In paragraph 3 of the Enforcement Notice, the Council has defined the alleged breach of planning control as the importation of material to form the creation of a hardstanding. Irrespective of the specific operations that may or may not have occurred to create the area of hardstanding it is clear to me that substantial amounts of material have been imported to the site to create an area of hardstanding. That is a matter of fact and therefore the appeal on ground (b) must fail.

The appeal on ground (a)

15. The ground of appeal is that planning permission should be granted. The main issues are:

- i. Whether or not the principle of a hardstanding in this location is acceptable;
- ii. the effect on the character and appearance of the area;
- iii. whether the development poses a risk with respect to ground contamination; and
- iv. whether the development is likely to contribute towards flooding in the locality.

Reasons

Principle

16. The appellant contends that the area of hardstanding is (in part) legitimately required for the long term use of the allotment to allow safe vehicular access and for parking and manoeuvring purposes. It is also argued that the hardstanding area could be used to relocate some dilapidated buildings and the area of land has become waterlogged meaning it is inaccessible during spells of heavy rain and during the winter.
17. According to Policy GE6 of the Halton Unitary Development Plan (the UDP) the appeal site is designated as greenspace. The policy related to the protection of greenspace and states that development will not be permitted unless it is ancillary to the enjoyment of the greenspace. Exceptions may be made where the loss of amenity value is adequately compensated for.
18. In this case the appeal relates to the retention of an area of approximately 2220 square metres of hardstanding. The alternative suggested by the appellant would be to remove approximately 1300 square metres and retain approximately 920 square metres (the appellant quotes the figure of 880 square metres). As such the development is clearly not ancillary to the use of the site as an allotment. Instead, it is an extensive area of hardstanding that relates poorly visually and functionally to the allotment area. It is far greater than what may be reasonably considered to be ancillary. It is my view that the policy is seeking to facilitate small amounts of development such as sheds, greenhouses or other small scale structures or operations that are required to allow the greenspace to function as an allotment for which it is specifically designated. The reduced area proposed by the appellant is far greater than reasonable required for the longer term use of the allotments and I do not see how the imposition of conditions can overcome the harm I have found.
19. In terms of amenity value the land has a number of roles as greenspace, including its community value as an allotment, a green visual break within its wider urban setting and its role as providing a place for community activity, contributing to the health and well-being of residents. To my knowledge the appellant has not offered compensation to mitigate the loss of the area of greenspace. As such, it has not been demonstrated that the development meets the criteria set out in Policy GE8.
20. Policy GE16 of the UDP relates to the protection of allotments. Development that would result in the loss of allotments will not be permitted unless particular criteria are met. There is insufficient evidence before me to illustrate that the allotments are badly located, poorly maintained and of an appearance detrimental to the locality, nor is there evidence to demonstrate that there is

no current or likely future demand for allotments in this area. In these circumstances the development breaches the provisions of Policy GE16.

21. On this issue I conclude that the principle of a hardstanding in this location is not acceptable.

Character and appearance

22. Policy BE1 of the UDP relates to general requirements for development and states that development will be permitted provided that a range of criteria are satisfied. Development must be of a high quality where design respects local distinctiveness and should also be compatible with existing and proposed surrounding uses.
23. The introduction of a large area of hardstanding into the area has significantly eroded the green visual break that was provided by the area of allotments. Furthermore, the development has been harmful to the visual quality of the local surroundings and harmed the local landscape value of the area, constituting an incongruous addition to the area which is at odds with its surroundings. The reduced extent of hardstanding as indicated by the appellant would reduce the effect of the development, but not to a degree that is considered acceptable given the particular characteristics of the site and its surroundings.
24. Therefore, based on the evidence before me and taking into account the particular site circumstances, on this issue I conclude that the development is harmful to the character and appearance of the area. As such it conflicts with policy BE1 of the UDP.

Ground contamination

25. Policy PR14 of the UDP relates to ground contamination and states that in circumstances where it is known or suspected that there is contamination on or adjacent to the site, the applicant will be required to satisfy a range of requirements relating to submitting details to assess the nature and degree of contamination, remedial measures and implementation of mitigation. No information has been submitted to characterise the material that has been imported onto the appeal site and therefore there is reasonable concern as to whether the land has been contaminated by the material.
26. Although potential contamination could be remediated, until suitable investigations have occurred it is not possible to confirm this. In the event of allowing the appeal a ground investigation could be attached to the grant of planning permission in order to ensure compliance with the development plan. In the absence of such condition the development is contrary to the provision of Policy PR14 and poses a risk to ground contamination.

Flood risk

27. Policy PR16 of the UDP relates to development and flood risk and sets out the Council's requirements to ensure that development proposals do not contribute toward flooding. In particular the policy states that development will not be permitted where it would contribute to the risk of flooding elsewhere. Before the hardstanding was developed on the land, it is my understanding that it was used as allotments which would have green field attenuation rates. The appellant has stated that the land suffers from poor drainage. At my site visit I

observed that parts of the site were very wet after a period of heavy rain, but there is insufficient evidence before me that such wet conditions mean that the site requires an area of hardstanding for access and vehicle movement purposes.

28. The material that has been imported onto the site has created a non-porous surface and there are no clear signs that a suitable drainage scheme has been implemented. Consequently, the surface may increase the risk of local flooding and in the absence of adequate evidence to consider this matter in detail, the development conflicts with Policy PR16 of the UDP. I have taken account the appellant's comments regarding the provisions of the Framework and the requirement for flood risk assessments, but that does not persuade me that the particular requirements of the adopted development plan have been met in this instance.
29. I am mindful that in the event of allowing the appeal a drainage scheme condition could be imposed on the grant of planning permission in order to ensure compliance with the development plan. Therefore, I conclude that the issue of flood risk may be mitigated by a suitably worded planning condition which would ensure that the development does not contribute towards flooding in the locality in accordance with Policy PR16 of the UDP.

Ground (a) conclusions

30. Although I have concluded that the issues of ground contamination and flood risk could be dealt with by the imposition of suitable worded conditions, I have also concluded that the principle of the hardstanding in this location is not acceptable and that there is harm to the character and appearance of the area. Those are the prevailing considerations. Therefore, having had regard to all other matters raised, I conclude that the appeal on ground (a) should be dismissed.

The appeal on ground (f)

31. The ground of appeal is that the steps required by the notice to be undertaken exceed what is necessary to achieve the purpose. The purpose of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the entire hardstanding to be removed, the purpose is clearly to remedy the breach.
32. The appellant accepts that the area of hardstanding created may exceed what is reasonably required to accommodate access, parking and building bases and has submitted a plan which shows the extent of the hardstanding that he proposes to remove. In this case, as a consequence of the requirement of the appeal to remedy the breach of planning control, leaving any part of it in place would not achieve that purpose. In this respect, the appeal on ground (f) fails.
33. Nonetheless, I am mindful that enforcement action is intended to be remedial and not punitive. With a ground (a) appeal included it would be possible to grant planning permission for part of the development. The appellant has suggested that the area of hardstanding could be reduced. The appellant has also suggested that he is happy for me to consider any suitable amendments to the scheme that would outweigh the Council's concerns. However, there is no duty on an Inspector to search for solutions and the alternative must be clearly

put to the Inspector. As such I have considered the obvious alternative as I have inferred from the appellant's evidence rather than gone searching for any other potential acceptable development.

34. Reducing the area of hardstanding by removing approximately 1300 square metres at would go some way to reducing the harm I have identified above with respect to the character and appearance of the area. However, I remain concerned that there would be an unacceptable visual impact on the area of designated greenspace. In addition, reducing the extent of the area of hardstanding as suggested would not overcome my conclusion that the principle of a hardstanding of this extent in this location is unacceptable. Therefore, the lesser steps would not sufficiently overcome the harm identified.

Conclusion

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

Formal Decision

36. It is directed that the enforcement notice shall be varied by:
- a) The deletion of requirement 5.2;
 - b) The deletion of requirement 5.3;
 - c) The deletion from requirement 5.4 of the words "located on top of the area of hardstanding";
 - d) The deletion of 6.2 as a time for compliance; and
 - e) The deletion of 6.3 as a time for compliance
37. Subject to these variations, 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 as amended.

A A Phillips

INSPECTOR