



Appeal Decision

Site visit made on 14 July 2020

by Sarah Dyer BA BTP MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal Ref: APP/J3530/C/19/3227777

Land at Bridge Farm, Top Street, Martlesham, Suffolk IP12 4RB

- 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 Christopher Brown against an enforcement notice issued by Suffolk Coastal District Council.
 - The enforcement notice was issued on 1 April 2019.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of land from a mixed use for agriculture and storage of cars and containers to the storage of vehicles, containers, caravans, trailers, boats, digger buckets, lorry backs, bricks, building materials, pallets, wall installation, scrap metal, metal drums, lorry trailers, rubbish, tyres and other miscellaneous items not associated with agriculture.
 - The requirements of the notice are
 1. Permanently cease using the land for the storage of vehicles, containers, caravans, trailers, boats, digger buckets, lorry backs, bricks, building materials, pallets, wall installation, scrap metal, metal drums, lorry trailers, rubbish, tyres and any other miscellaneous items not associated with agriculture within the area hatched red only.
 2. Permanently remove from the area hatched in red on the attached plan all vehicles, containers, caravans, trailers, boats, digger buckets, lorry backs, bricks, building materials, pallets, wall installation, scrap metal, metal drums, lorry trailers, rubbish, tyres and any other miscellaneous items not associated with agriculture (i.e. excluding the areas edged in blue and marked one and two on the plan attached).
 3. Return the land (with the exception of the areas edged in blue on the attached plan) to the condition it was prior to the unauthorised development taking place by reseeding with grass seed or turfing the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)[b], [d], [e], [f] and [g] of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of the words 'by reseeding with grass seed or turfing the land' in the third requirement and by the deletion of '3 months' and the substitution of '6 months' as the period for compliance.
2. The appeal is dismissed and, subject to the variations, the enforcement notice is upheld.

Procedural Matter

3. The appellant has selected grounds (c) and (e) on the appeal form but he later clarified via his agent that the appeal was on the grounds which are set out in the banner. There is no appeal under ground (a), therefore the merits of the development are not before me, including local support for the use of the land, any benefits arising from the use of farm buildings or the visibility of the site from public land.

Ground (e)

4. An appeal under ground (e) is made on the basis that copies of the enforcement notice were not served as required. Section 172 (2)(b) of the Town and Country Planning Act 1990 (as amended) requires that a copy of an enforcement notice be served (a) on the owner and on the occupier of the land to which it relates and (b) 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.
5. The appellant argues that the notice should not have been served on one of the parties who received it because he has no interest in the land. The Council has produced evidence in the form of a copy of the land register which defines the state of the title plan in June 2018. Despite the time which has elapsed since the property details were obtained and the service of the Planning Contravention Notice in September 2016, even if the notice has been served on someone who no longer has an interest in the land this does not render the notice improperly served.
6. The appellant also says that the notice should have been served on the operator of a builder's business who uses part of the site for storage. However, there is no further information about the extent or nature of this individual's interest in the land. On this basis it has not been demonstrated that the party has been substantially prejudiced by any failure to serve notice. Furthermore, the Council affixed a copy of the notice close to the entrance to Bridge Farm Business Centre. Notwithstanding the concerns raised by the appellant I am satisfied on the basis of the photographs provided that a notice in that position would be readily viewable by users of the access including the builder referred to by the appellant.
7. For the reasons set out above, the appeal on ground (e) fails.

Ground (b)

8. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
9. The appellant says that the area of land to which the notice relates includes land which was not shown on the plan considered by the Council's committee when it authorised the notice. He identifies this area as Area 4 in his statement. He also states that Area 4 has not been used for the purposes alleged on the notice.
10. Taking the appellant's points regarding the authority to serve the notice. The Council says that the addition of Area 4 on the notice plan was authorised under its scheme of delegation. The appellant does not provide evidence to

contradict this statement. Furthermore, case law in the form of *Beg & others v Luton BC* [2017] EWHC 3435 (Admin), makes it clear that an allegation that the person who had issued a planning enforcement notice had not had the authority to do so is not an allegation of an error on the face of the notice. Therefore, any such error would not result in the notice being a nullity in the terms of an appeal under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991, which applies to the notice itself only. To seek judicial review would be the appropriate means by which to challenge the notice on the basis that there has been an error in the process carried out by the Council in this instance.

11. With regard to any unauthorised use of Area 4. During my site visit I noted that there is a bund which separates one part of the site from another and that Area 4 forms part of a field on the opposite side of the bund to the majority of the site. The Council has provided photographs to show a trailer and a container in this part of the site.
12. The notice refers to change of use from a mixed use for agriculture and storage of cars and containers and the Council makes it clear in its submissions that it considers the storage uses are taking place in two discreet areas of the site. These areas do not fall within Area 4 and it follows that the lawful use of this part of the site is agriculture.
13. Whilst in comparison with other parts of the site Area 4 has not been shown to be intensively used for the storage uses described in the notice, there is no information before me to explain the presence of the trailer and the container in Area 4. Nor is there any evidence to demonstrate that the trailer or the container were or are in use in association with the lawful use of this part of the site.
14. There is no dispute between the parties that the majority of the site is in use for the storage of items which are specified in the notice. Whilst the evidence in relation to Area 4 is not as convincing, the onus is on the appellant to demonstrate that the alleged change of use has not occurred as a matter of fact. The evidence which is before me has not demonstrated this on the balance of probabilities.
15. For the reasons set out above the appeal under ground (b) fails.

Ground (d)

16. An appeal on ground (d) is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
17. The Council has identified two areas on the site plan which accompanies the notice in blue (which I will refer to as Blue 1 and Blue 2). It accepts that within Blue 1 there is an established use for storage of cars and within Blue 2 for storage of containers.
18. The appellant relies on a series of aerial photographs to demonstrate that significant additional areas beyond Blue 1 and Blue 2 have been used for the purposes set out in the notice for in excess of 10 years. On this basis he

considers that these additional areas were immune from enforcement action at the time the notice was served.

19. It is not clear from the evidence what the boundaries or extent of these additional areas are. Furthermore, there is limited evidence to show how these parts of the site have been used or that those uses coincide with the breach identified in the notice. Thus, in combination with the poor quality of the 'blown up' images in particular, the appellant has not shown on the balance of probabilities that additional areas of the site, over those identified by the Council, could be immune from enforcement action. Nor has he shown that the area as a whole identified on the notice plan is immune from enforcement action.
20. The appellant has referred to witness statements and other documentation on his appeal form. However, these documents are not before me, therefore they have had no bearing on my decision.
21. For the reasons set out above, the appeal under ground (d) fails.

Ground (f)

22. An appeal under ground (f) is on the basis 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.
23. The appellant argues that the requirements of the notice should not apply to the additional areas over and above Blue 1 and Blue 2 which he contends are immune from enforcement action. It will be seen from my consideration of the ground (d) appeal above that the appellant has not shown on the balance of probability that those areas are immune. It follows that it is necessary for the requirements of the notice to apply in full to the area shown hatched in red on the notice plan.
24. The appellant notes that Area 4 is in a natural condition and with the exception of the trailer and container I found this to be the case at my site visit. The Council has not responded to this particular point and is confident that the steps required are fit for purpose and clear. Nevertheless, the scope of the notice is limited by s173(4)(a) and (b) of the Planning Act 1990, such that where planning permission has not been granted, the power is simply to return the land to its previous condition. On this basis I will vary the notice to remove the requirement for reseeding/turfing.
25. The appellant also queried how the requirements to reseed or turf can be met where buildings occupy parts of the notice area. My proposed variation of the requirements also deals with this point.
26. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

Ground (g)

27. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant seeks a compliance period of 9 months. The view of the Council is that this extended period is too long, however they are not opposed to increasing the compliance period should I deem this appropriate.
28. In part the appellant considers that the three-month compliance period is too short because it would have a significant impact on his business. However, he has not provided any substantive evidence to support this contention and the impacts are not clear from the information before me.
29. The appellant also considers that the compliance period is too short because he needs longer to assess whether the items are connected with agriculture or not, to clear them from the site and, following those activities, the reseeding/turfing of the land. I have varied the notice to remove the requirement for reseeding/turfing, however this does not remove the need to return the land to its condition prior to the unauthorised development.
30. There are a considerable number of items to be cleared from the site, some of which may be capable of being moved under their own power but significant amounts of which will require removal by a vehicle. The wider area accommodates a nursery and other businesses and it is important to ensure the protection of the users of the nursery, their children and other business operators. Given the site context I consider it reasonable to extend the compliance period to 6 months to ensure a controlled removal of items from the site and full compliance with all of the requirements of the notice.
31. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Conclusion

32. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice, as varied.

Sarah Dyer

Inspector