
Appeal Decisions

Site visit made on 28 July 2020

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2020

Land at Millfield Lane, Millfield Lane, Bury Green, Little Hadham SG11 2ED

Appeal 1 Ref: APP/J1915/C/19/3243632

- 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 Richard Newman against an enforcement notice issued by East Hertfordshire District Council.
- The enforcement notice was issued on 22 November 2019.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised excavation of material from the site and the importation of waste material onto the site.
- The requirements of the notice are:
 - i. Remove the waste material from the site area shown on the attached plan edged in red, to a depth of at least 0.5 metres or until all the imported waste has been removed.
 - ii. Re-instate the land by infilling the resultant cavity from (i) with clean material similar to the field area and thus reinstate the land levels to the original condition, as seen in the attached images A, B and C taken on 3rd January 2019.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Appeal 2 Ref: APP/J1915/C/19/3243633

- 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 Richard Newman against an enforcement notice issued by East Hertfordshire District Council.
- The enforcement notice was issued on 22 November 2019.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised use of the site to import and deposit waste materials.
- The requirements of the notice are:
 - i. Cease the use of the site for the importation and storage of waste material.
 - ii. Remove the waste material from the site area shown on the attached plan edged in blue, to a depth of at least 0.5 metres or until all the waste has been removed. Remove the resultant waste material from the site.
 - iii. Remove any other waste material from the site.
 - iv. Re-instate the land by infilling with clean material similar to the area edged in red and thus reinstate the land levels to the original condition, as seen in the attached images A, B and C taken on 3rd January 2019

- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Preliminary matters

Enforcement Notices and Appeals

1. The Council issued an enforcement notice alleging operational development (Notice 1) which is the subject of Appeal 1 and an enforcement notice alleging a material change of use (Notice 2) which is the subject of Appeal 2. The two enforcement notices relate to the same area of Land situated on the eastern side of Millfield Lane, comprising a field of around 2.4 hectares (ha). Within the Land outlined in red on the notice plans an area of 98 metres (m) by 25 m is outlined in blue and labelled Site.
2. I sought clarification, more particularly from the Council, on the wording of the alleged breaches of planning control, the reference to the area edged in blue and the use of the words Land and site. As a result of the responses from the main parties the following corrections to the notices are proposed.

Notice 1

3. The Council confirmed that step 1 of the requirements should refer to removal of waste material from the smaller area edged in blue, not the area edged in red, to ensure consistency between the notices. That being the case the allegation will also be corrected to include reference to the area edged in blue.
4. The Council also requested that the notice requires 'excavation for the purpose of depositing waste material cease', given the requirement in Notice 2 for the cessation of the use of the site for the importation and storage of waste materials. I also consider that this addition would not increase the scope of the notice because of the existing requirements to remove all imported waste material and to reinstate land levels to their original condition.

Notice 2

5. The wording of the alleged breach of planning control in Notice 2 should relate to an act of development on the Land. Therefore I will correct the misdescription by rewording the description to a material change of use of the Land to a mixed use for agriculture and to import and deposit waste materials.
6. It follows that minor corrections are required to the steps to ensure consistency in the wording.
7. I am satisfied that these corrections to Notice 1 and Notice 2 are able to be made without causing injustice to either the appellant or the local planning authority, bearing in mind the extent of the Land and the identification of the Site within the Land.

The Land

8. On 26 February 2019 planning permission was granted for a change of use of land from agricultural to sui generis (equestrian use), and the erection of a stable block comprising 6 stables, tack room and hay store (the 2019 permission, ref 3/18/2664/FUL). The site of the development was confined to an area of about 540 m² in the north eastern corner of the Land, as shown on the approved revised site plan ref. 13318-P004-C. The revised plan reduced the area of hardstanding to the west of the stable block.
9. Condition 4 of the permission requires a programme of archaeological work to be carried out in accordance with a written scheme of investigation which first has been submitted to and approved in writing by the local planning authority. No development or groundworks shall take place until the approved scheme of investigation has been implemented. The archaeological reports have to be submitted and approved in writing by the local planning authority before the condition can be discharged.
10. The site visit confirmed that the stable block has been erected and a concrete yard formed adjacent to the building. An area of hardstanding has been formed and surfaced with road planings or similar material. This rectangular area extends from the stable building to the boundary fence and the site access and then through to the edge of the carriageway. The remainder of the Land appeared to be rough grassland and vegetation, sloping gently down towards the south east.

Reasons

11. The Council chose to issue two notices rather than combining the acts of development into a single notice. In view of the overlap in the evidence from the main parties I will deal with grounds of appeal in respect of Notices 1 and 2 together, distinguishing conclusions as appropriate.

Appeals on ground (c)

12. To succeed on the ground (c) appeals the onus is on the appellant to show that the use of the land and the operational development, as described in the notices, do not constitute breaches of planning control. The standard of proof is the balance of probability.
13. The main points of the appellant's case (which is very similar in each appeal) are that the excavation works carried out were necessary to comply with condition 4 of the 2019 permission and to construct the concrete base for the stables and the hardstanding associated with that development. The excavated material was stored on the adjacent land. The material brought onto the site was non-contaminated crushed concrete, which was laid for a specific purpose to form the sub-base for the stables and associated hardstanding. Therefore it did not constitute the storage of waste material.

Area of excavation

14. I agree that compliance with condition 4 of the 2019 permission would have necessitated excavation to place on the Land. However, evidence from the approved archaeological scheme and final report together with the Council's observations on site indicate that the area of excavation was significantly in excess of the approved area.

15. In more detail, the submitted and approved written scheme of investigation for archaeological strip, map and recording identified the development site in the north western corner of the larger field and also the slightly smaller site of the proposed stables development, consistent with the approved revised site plan ref. 13318-P004-C. Under the heading Methods and sub-heading Excavations¹ the brief stated that “the site will be stripped under close archaeological supervision to the archaeological horizon or the natural geology, whichever is reached sooner. An exception to this is if the Brief states the ground reduction should only extend as far as the development impact level.” The focus of excavation is “the site” and there is nothing in the investigation scheme to indicate that excavation would cover a more extensive area.
16. The strip, map and sample investigation took place between July and August 2019. The final Archaeological Strip, Map and Sample Report dated September 2019 acknowledged that an area of c.2,256 sq. m was initially stripped of topsoil and some of its subsoil without archaeological supervision and without informing the authors of the report. Subsequently, a smaller area, c.670 sq m, was mechanically stripped of subsoil to expose the natural geology under close archaeological supervision².
17. The Council’s evidence is that the area of waste-looking material, as measured on a site visit undertaken on 5 September 2019, was approximately 100 m by 20 m and at least 0.5 m in depth. The material was described as broken up bricks and building rubble, pieces of cement, metal, glass and plastics, as shown on photographs taken at the time. On a visit shortly after, on 11 September, the material on site had compacted and the area was re-measured to be approximately 98 m by 25 m (2,450 m²).
18. The area of c. 2,256 sq. m initially stripped of topsoil, without archaeological supervision, was roughly equivalent in size and in a similar location to the area of waste-looking material reported by the Council. An excavated area of this size was not required to carry out the approved scheme of archaeological investigation. It also extended well beyond the approved development area for the stable block, yard and associated hardstanding, estimated to be 555 m² by the appellant and 540 m² by the Council.
19. The appellant acknowledged that some material, described as crushed concrete, was laid on land to the east of the application site. According to the appellant this material was moved to the application site and the land infilled with the original earth. However, this version of events is lacking in detail and is not supported by evidence on the amount of material deposited and the size and depth of the excavation area. Furthermore, the Council’s reports of observations on site make the appellant’s evidence less than probable. I conclude that excavation took place over an excessive area.

Material

20. The appellant submitted documentation in the form of a copy of a waste transfer note and results of a sample analysis of crushed concrete (the 6F2 certificate) to support his view that the material deposited on the land was non-contaminated crushed concrete. He maintained that other materials noted

¹ Paragraph 2.3 of the Written Scheme of Investigation for Archaeological Strip, Map and Recording, April 2019, KDK Archaeology Ltd

² Paragraphs 2.4 and 4.1 of the Archaeological Strip, Map and Sample Report, September 2019, KDK Archaeology Ltd

by the Council were the result of fly tipping and that they were collected by hand and disposed of off-site following the Council's visit.

21. The Council in its case explained that the Environment Agency visited the site on 11 October 2019 and advised that the imported material was waste rather than hard core material. No permits or exemptions were registered with the Environment Agency for the site. An email from an officer at the Environment Agency dated 16 December 2019 provides a detailed commentary on the appellant's documentation. Of particular significance is the Agency's advice that the 6F2 certificate goes to size grading only and says nothing about the cleanliness of material. The waste transfer note includes details that indicate the material deposited was mixed construction and demolition waste that did not contain hazardous substances and which would have come directly from a building/demolition site.
22. I attach substantial weight to the expert advice of the Environment Agency and conclude on the balance of probability that waste material was deposited on the land.

Purpose of excavation

23. As to the chronology of events after the archaeological site investigation had been completed in August 2019, the Council's evidence includes reports and dates of site visits. By contrast such detail is absent from the appellant's evidence. There is no dispute that an area of some 2,256 m² was excavated and the probability is that imported material covered an area of some 2,450 m². The appellant has confirmed that the application site area for the development of the stables was 555 m² and that the stables building occupied 145 m². A simple comparison of areas provides no support that the only material brought onto the site was for the purpose of constructing the sub-base for the stables and associated hardstanding.

Conclusions

24. Notice 1. The meaning of development in section 55 of the 1990 Act includes the carrying out of an engineering operation on land. The development that took place in 2019, involving the excavation of material that facilitated the subsequent importation of waste material across an area of some 2,450 m², was not authorised by the 2019 permission or the approved scheme of archaeological investigation. The appellant has not claimed the operation was permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015. A breach of planning control took place and the appeal on ground (c) fails.
25. Notice 2. The meaning of development in section 55 of the 1990 Act includes the making of any material change in the use of land. In 2018 and the beginning of 2019 when the planning application for the stables was under consideration the land was an agricultural field, used for the grazing of horses. The 2019 permission authorised the change of use of the north east corner of the field, an area of some 540 m², to a sui generis equestrian use. The evidence has shown on the balance of probability that a larger area, including but extending beyond the equestrian development site, was used to import and deposit waste materials. The use was not necessary in connection with the construction of the base of the approved stables and the associated hardstanding. The character of the land changed, becoming different to what

was there before. A material change of use took place prior to the commencement of development on the equestrian use. Development took place that was not authorised by the 2019 permission and a breach of planning control occurred. The ground (c) appeal fails.

Appeals on ground (f)

Notice 1

26. The issue is whether the steps required by the notice to be taken are excessive to achieve the purpose of the notice. In an appeal on ground (f) it is not open to the appellant to question the purpose of the notice. Section 173(4) allows for remedying the breach by restoring the land to its condition before the development took place.
27. The reasons for issuing the notice set out the policy and environmental objections to the development, which indicate that a purpose of the notice is to remedy the breach of planning control.
28. Within that context the removal of the waste material and the reinstatement of the land, as set out in the two steps of the requirements, are not excessive.
29. It is the case that in order to comply with the steps the stables would have to be dismantled and the existing hard surface materials for the yard and the parking/circulation area would have to be removed, at least for a temporary period while the remedial work is carried out. However, in the ground (c) appeal I have not accepted the appellant's case that the only material brought onto the site was necessary for the construction of the base for the approved stables and the associated hardstanding. The evidence shows that in all probability unauthorised waste material lies beneath this development. Therefore a lesser step that allowed the waste material under the stables development to remain would not achieve the purpose of the notice.
30. Even with a purpose to remedy any injury to amenity, removal of the waste material and the reinstatement of the land are not excessive in order to ensure no harm to amenity in the short and longer term.
31. The appellant considered an appropriate resolution would have been for the Council to require the existing hardstanding be regularised as part of the landscaping scheme required under condition 7 of the 2019 permission. I disagree. Firstly, such a requirement would be uncertain and would not comply with section 173(3) of the 1990 Act. Furthermore, having regard to the wording of the planning condition, the probability is that such an approach would not be able to secure the removal of the waste material underlying the hardsurfacing and hence would not achieve the purpose of the notice. The wording of the appellant's proposal also indicates that the intention would be to gain approval for the area of hardstanding that has been laid beyond the revised red line site boundary approved through the 2019 permission. The breach of planning control that is the subject of the current notice would not be addressed. No appropriate lesser steps and no obvious acceptable alternative has been identified.
32. The appeal on ground (f) fails.

Notice 2

33. As with Notice 1, the issue is whether the steps required by the notice to be taken are excessive to achieve the purpose of the notice. In an appeal on ground (f) it is not open to the appellant to question the purpose of the notice. Section 173(4) allows for remedying the breach by discontinuing any use of the land.
34. The reasons for issuing the notice set out the policy and environmental objections to the development and confirm that a purpose of the notice is to remedy the breach of planning control.
35. The appellant submitted that step 1, cease the use, is not relevant because the site is not being used for the importation and storage of waste material. This aspect of the appellant's case is based on the submission that the only material brought onto the site was necessary in connection with the construction of the base for the approved stables and associated hardstanding. When considering the ground (c) appeal I have concluded that the evidence does not support this claim. To require the use to cease is necessary to achieve the purpose of the notice.
36. The additional points put forward by the appellant in respect of Notice 2 are the same as those for Notice 1. I adopt the same reasoning as set out above, which is equally relevant to Notice 2.
37. The appeal on ground (f) fails.

Appeals on ground (g)

38. The issue for both appeals is whether the compliance periods are reasonable.
39. The compliance period in each case is 3 months. The appellant simply states that this period of time is not sufficient to dismantle the stables, remove the hardstanding and reinstate the land to its original condition.
40. With reference to the enforcement authorisation report the Council was aware that the stable block had been erected and the toppings had been laid over the waste material. The Council remains of the view that 3 months is ample time to remove the deposited materials and to reinstate the land.
41. The cessation of the use could be achieved within the compliance period. The disputed element is whether the period is reasonable to dismantle the stables, remove the existing surface coverings and waste materials, backfill with clean material and reinstate the land levels to their previous condition. The appellant has not explained what arrangements would need to be put in place, considered the availability of contractors or identified any specific constraints that may exist.
42. The timeline of events over the period August to October 2019 indicates that 3 months would not be unreasonable. Within that period it appears that the base was laid for the stables and the stable building erected during October. Furthermore, the removal of the waste materials should be secured as speedily as reasonably possible to minimise the potential harm to the local environment. In the interests of the amenity of those living nearby the period of reinstatement should not be unduly protracted.

43. I conclude that 3 months is a reasonable period for compliance and the appeals on ground (g) fail.

DECISIONS

Appeal Ref: APP/J1915/C/19/3243632

44. It is directed that the enforcement notice be corrected:

- In paragraph 3 by the deletion of the description of the alleged breach of planning control and the substitution of the description "Without planning permission, the unauthorised excavation of material from the site (as shown edged in blue on the attached plan) and the importation of waste material onto the site."
- In paragraph 5, the deletion of the wording of step (i) and the substitution of "Cease excavation for the purpose of depositing waste materials. Remove the waste material from the site area shown on the attached plan edged in blue to a depth of at least 0.5 metres or until all the imported waste has been removed."

45. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Appeal Ref: APP/J1915/C/19/3243633

46. It is directed that the enforcement notice be corrected:

- In paragraph 3 by the deletion of the description of the alleged breach of planning control and the substitution of the wording "Without planning permission, the unauthorised material change of use of the Land to a mixed use for agriculture and to import and deposit waste materials."
- In paragraph 5, in step (i) and step (iii) the substitution of the word 'Land' for the word 'site'.

47. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Diane Lewis

Inspector