
Appeal Decision

Site visit made on 18 August 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 September 2020

Appeal Ref: APP/P1805/C/20/3248581

Land at Tarncroft, Hewell Lane, Tardebigge, Bromsgrove B60 1LL

- 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 Timothy Peter Ayling against an enforcement notice issued by Bromsgrove District Council.
- The enforcement notice was issued on 12 February 2020.
- The breach of planning control as alleged in the notice is without planning permission:
 - (a) The material change of use of part of the land, shown hatched red on the Plan A ("the hatched land") from agricultural use to use as domestic garden land as part of the dwellinghouse known as 'Tarncroft' ("the unauthorised change of use"); and
 - (b) The carrying out of engineering operations on the hatched land by the creation of a track in the approximate location shown hatched blue on Plan B ("the unauthorised development") to facilitate separate vehicular and pedestrian access to Tarncroft.
- The requirements of the notice are:
 1. Permanently cease use of the hatched land as domestic garden land as part of Tarncroft.
 2. Remove from the Land all materials used to create the unauthorised development.
 3. Reinstate the land shown hatched blue on Plan B where any materials have been removed in compliance with requirement (2) above using topsoil to recommended British Standard BS3882:2015.
 4. Reinstate the density of hedgerow to the left of the hatched land, between the points marked 'x' and 'y' on Plan B, by planting hedge with 600-800mm length whip planting of Hawthorn40%, Blackthorn40%, Holly10% and Dog Rose10% at the mix rate given using a double staggered row with 40cm between the rows and 4 plants per meter within the two rows.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Summary Decision: The enforcement notice is quashed.

Application for costs

1. An application for costs was made by Mr Timothy Peter Ayling against Bromsgrove District Council. This application is the subject of a separate decision.

Procedural Matters

2. Whilst the appeal was proceeding the appellant confirmed that he had appointed an agent to represent him. That agent requested, even though the appellant had not applied to appeal on ground (a), whether an appeal on ground (a) could be submitted if the requisite fee was paid. However, since the prescribed fee had not been paid within the specified period, an appeal on ground (a) and an application for planning permission that would have been

deemed to have been made under section 177(5) of the Act had lapsed. The appellant and agent were informed that consequently it was not possible for a ground (a) appeal to be submitted at that stage.

3. The appellant states that 2 different copies of Plan A were attached to the enforcement notice that was served on him. Both of the copies of Plan A have an area of land shown edged red. However, only one of the copies of Plan A has an area hatched red on it. The Council have stated that the copy of Plan A without the hatched red area on it does not form part of the enforcement notice. It is not clear how or why 2 different copies of Plan A appear to have been attached to the copy of the enforcement notice served on the appellant.
4. Nevertheless, as the one copy of Plan A contains both an area of land edged red and an area hatched red, both cited within the enforcement notice, I will treat this to be Plan A for the purposes of determining this appeal. As the appellant received both copies of the plan there would be no injustice to him in this respect.
5. The appellant has also raised an issue with the Council's notification of the appeal in respect of the neighbouring occupier. I acknowledge that the reference numbering system utilised by the Council in this case could be confusing and that the appeal documents do not appear to have been published on the Council's website until the 22 July 2020. Moreover, with the Council's offices being closed due to the current Covid-19 coronavirus pandemic the documents are not available to view there. In addition, the description of the alleged breach does not reflect that contained within the enforcement notice.
6. However, the notification letter was sent to the occupier of the neighbouring property and it does contain alternative ways of contacting the Council and arranging to discuss or view the appeal documents. As such, the occupier of the neighbouring property had the opportunity to comment on and view the appeal documents.

The Notice

7. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
8. The appellant's submissions identify what he considers are failings with the enforcement notice. The breach of planning control described at (a) relates to *'The material change of use of part of the land, shown hatched red on the Plan A ("the hatched land") from agricultural use to use as domestic garden land as part of the dwellinghouse known as "Tarncroft"'*. However, the appellant contends that it is not apparent from the enforcement notice including the reasons for issuing the notice as to what he has *'done to incorporate the land as domestic garden land'*.
9. Reason iii. of the enforcement notice states, amongst other things, that *'the incursion of activity associated with the creation of a vehicular driveway'*. It would appear that the use of the alleged engineering operations as a track facilitating vehicular and pedestrian access to Tarncroft is, more likely than not,

the basis of the alleged material change of use. Nevertheless, I consider that it would not be clearly apparent to a reader of the enforcement notice as to what activities had to cease to meet requirement 1 of that notice.

10. Whilst, in my experience, a material change of use can occur with the use of a vehicular/pedestrian access that serves a dwelling the description of alleged breach (a) and requirement 1 in the enforcement notice are vague and imprecise in this respect. I could correct the notice by deleting alleged breach (a) and requirement 1. Nonetheless, I consider that I can only carry out these corrections if I was able to correct the remainder of the requirements, as indicated below, without injustice to the parties. This is due to the fact that for there to be no injustice to the Council, in respect of deleting alleged breach (a) and requirement 1, the remainder of the requirements would need to ensure the restoration of the land to its previous condition, therefore, its use as a track would cease.
11. However, the appellant has also highlighted, within his ground (f) appeal that he considers that requirements 2, 3 and 4 exceed what is necessary to remedy breach (b) and that the enforcement notice is defective in these respects. In addition, at the site visit I requested that the parties point out to me and try to reach agreement as to where, as shown on Plan B, points 'x' and 'y' are and where the extent of the area hatched blue is on the site.
12. The appellant's statutory declaration makes it clear that material from the foundations of the buildings that were on the site immediately prior to the engineering operations taking place was used within those operations. Moreover, requirement 3 requires the appellant to '*reinstate the land*' but it does not specify whether this is referring to ground levels or not. In addition, this requirement goes on to specify the use of topsoil to a British Standard but it is not clear if the whole of the area hatched blue was covered in topsoil prior to the breach occurring.
13. Furthermore, I consider that the notation of 'x' and 'y' on Plan B is vague and imprecise because the reader of the enforcement notice would not be able to precisely identify which points on the site are identified by the notation. In addition, there is no dispute that the wording '*to the left of the hatched land*' is imprecise. It is also not clear from the evidence before me and my observations at the site visit as to whether a hedgerow on the appeal site has been removed, its density reduced or what constitutes/d the species of plants within such a hedgerow prior to the breach occurring.
14. I could delete requirements 2, 3 and 4 entirely and replace them with a requirement/s to remove from the land all the imported materials used to create the unauthorised development and to restore the condition and ground levels of the part of the land shown hatched blue on Plan B to that which existed immediately prior to the breach of planning control occurring. However, given all of the above I cannot be certain that these corrections could be carried out without injustice to either of the main parties.
15. Additionally, it became apparent at the site visit that, parts of the engineering operations cited within the description of breach (b) did not appear to be included within the area hatched blue. Both parties were given the chance to comment on this matter and whether the area hatched blue needed to be amended and whether that amendment would cause injustice to either party.

16. The appellant has submitted a plan which he states is a topographical survey of the site that was commissioned in connection with a previous planning application/planning appeal¹ on this site for the development that forms the alleged breaches and I have no reason to dispute the accuracy of that plan. A comparison of that plan with Plan B combined with my observations at the site visit confirms that the junction of the track, that has been created by the engineering operations, with the access drive that serves High House, the neighbouring dwelling, is appreciably closer to Hewell Lane than is shown on Plan B.
17. As such, parts of the engineering operations are not within the area hatched blue on Plan B and they are also outside of the land edged red on Plan A. Caselaw² has found that an Inspector has the power to amend the plan attached to the enforcement notice if that amendment can be carried out without injustice to either party.
18. The engineering operations extend into the area identified as '*The Copse*' within the evidence before me. This area consists of a belt of trees and it appears that this could be the woodland cited within the reasons for issuing the enforcement notice. According to the appellant The Copse is within his ownership. However, he has also stated that in preparing his submissions for the appeal he only took into account the area of land edged red and its past use. The Council has stated that it considers that the hatched blue area could be amended without injustice to either party.
19. The extension of the area of the land edged red and hatched blue would mean that another area of land with, what could be, a distinct past use to that of the remainder of the appeal site would be incorporated into the appeal site. I consider that this would have an impact on the arguments and evidence that would be submitted in relation to the grounds of appeal. Therefore, I cannot be certain that the amendments to the plan can be carried out without injustice to the main parties.
20. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the steps required for compliance and the land where the breach of planning control is alleged to have taken place. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act since it appears that injustice would be caused were I to do so. Consequently, the enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (b), (c), (e), (f) and (g) as set out in section 174(2) of the 1990 Act do not fall to be considered.

Formal Decision

21. The enforcement notice is quashed.

D. Boffin

INSPECTOR

¹ Ref Nos: 18/01172/FUL & APP/P1805/W/18/3217806

² *Howells v Secretary of State for Communities and Local Government* [2009] EWHC 2757 (Admin); [2010] JPL 741