



Appeal Decision

Site visit made on 20 August 2020

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/P1615/C/20/3250310

**Land adjacent to Boseley Court, Blaisdon Road, Westbury on Severn,
Gloucestershire GL14 1LT**

- 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 Harley Phelps against an Enforcement Notice (EN) issued by Forest of Dean District Council.
 - The enforcement notice was issued on 4 March 2020.
 - The breach of planning control as alleged in the notice is: The construction of 2 large hardstandings and the material change of use of the land to a storage yard.
 - The requirements of the notice are: (a) Cease the use of the land as a storage yard; (b) Remove all plant/vehicles/equipment and materials from the land; (c) Remove the hardstandings located within the areas as marked with blue hatching on the attached site location plan and restore the land back to its original ground level; (d) after compliance with step (c) above, seed the regraded area with grass.
 - The period for compliance with the requirements is: 1) Step a) 1 month from the date this enforcement notice takes effect; 2) Steps b) and c) 3 months from the date this enforcement notice takes effect; 3) Step d) by the next planting season or 6 months from the date this enforcement notice takes effect, whichever is sooner.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice is varied by deleting the time periods "1 month" from step (a) and "3 months" from steps (b) and (c) and replacing each one with "6 months". Subject to these variations, the appeal is dismissed, the Enforcement Notice (EN) is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act.

Preliminary Matters

2. The appellant contends the Council did not follow its enforcement policy when seeking to take enforcement action. It is also alleged that the Council's actions may have been prompted by complainants who have an interest in the land. However, these concerns are not relevant to my determination of the appeal. They should be addressed directly with the Council.
3. The appeal form did not initially include a case under s174(2)(e) of the 1990 Act. However, in the appellant's grounds of appeal, which the Council has seen and had the opportunity to comment upon, the appellant raises a matter under ground (e) which I shall consider below.

Ground (e)

4. In this legal ground of appeal, the case to be made by the appellant is that copies of the EN were not served as required by section 172 of the 1990 Act. That requirement relates to serving copies of the EN on any owner and occupier of the land and any persons with an interest in the land which in the opinion of the local planning authority is materially affected by the notice. The appellant states that he is unaware as to whether the EN has been served correctly on other person's having an interest in the land. However, it is not for me to search around to establish that is the case or not based on a vague assertion not backed by any substantive evidence. The appellant has not discharged their responsibility to show that the EN was not properly served. Consequently, the ground (e) appeal fails.

Ground (b)

5. The ground of appeal is based on the claim that the matters alleged in the EN have not occurred. This is a separate argument from whether there has been a breach of planning control, which I shall consider below. The onus to make out the case successfully rests with the appellant.
6. In aerial photographs taken in 2000, 2007 and 2014 there are no signs of the hardstandings or any storage taking place that the enforcement notice alleges. The 2007 image does show what may be a small hard area just inside the gate to the site, but that is nowhere near the extent of the hard surface that now exists. Moreover, in 2009 a street view image shows cows grazing grass where the former small hardened surface may have been.
7. In stark contrast the Council's site inspection photographs taken over August to October 2018 show mounds of what are probably stripped back earth and large areas of compacted broken bricks and other hard debris that has been laid to create the hardstandings by diggers and other earth shifting vehicles that look like dumper trucks. The materials imported onto the site from the breaking up of a roadway on an adjoining farm may have been added to other onsite material, but their spread and reworking with the soil previously stripped back shows that the hardstandings have been created. There is no hint in the historic aerial and street view photos of any access track where the smaller hardstanding has been created. The works undertaken go way beyond what might be considered repair to make a track suitable for agricultural use, even if there was one there in the first place.
8. Furthermore, the Council's site inspection photographs clearly show various plant/vehicles/equipment on the land. Some of this maybe required for agricultural purposes. However, the fact that there are several diggers, trucks and machinery that appears to be for crushing and sorting rubble, as was still the case when I saw the site, seems to go well beyond what may be reasonably necessary for fruit farming and agriculture. There is nothing to substantiate that vehicles and equipment of this nature is needed for animal husbandry. In addition, given that this type of equipment and vehicles also appear to have been there for around two years, it is difficult to envisage they are there temporarily for drainage works. As a matter of fact and degree, it is more probable the vehicles etc are being parked and stored on the land.

9. As a matter of fact, there are two hardstandings on the land and they are being used for storage purposes. The appellant has failed to show otherwise. Consequently, the ground (b) appeal cannot succeed.

Ground (c)

10. Taking account of the above, creating the hardstandings involved engineering operations and the storage taking place on them is primarily not connected with the agricultural use of the land. Therefore, there has also been a material change of use. Both limbs of the development that has occurred require planning permission.
11. The Town and Country Planning (General Permitted Development) Order 2015 (GPDO) does grant planning permission under Schedule 2, Part 6, Class A for the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of (b) any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit. Moreover, Part 6, Class B allows for the carrying out on agricultural land comprised in an agricultural unit of not less than 0.4 but less than 5 hectares in area, of development consisting of (e) the provision of a hard surface reasonably necessary for the purposes of agriculture within the unit.
12. However, such development is not permitted if any part of the development would be within 25 metres of a metalled part of a trunk road or classified road. Both hardstandings are within 25 metres of Blaisdon Road, which is a classified road. Consequently, the GPDO has not granted planning permission for the hardstandings. There is nothing else substantive to show that the developments carried out are not breaches of planning control.
13. Therefore, the ground (c) appeal does not succeed.

Ground (a)

14. The main issues are the effects of the development on:
- a) the character and appearance of the area, including whether the setting of the adjoining Boseley Court, which is a grade II listed building, has been preserved;
 - b) highway safety and whether the site is sustainably located in terms of development plan policies that seek to direct new direct to settlements.
15. The Council's fourth reason for issuing the EN is based on insufficient information demonstrating there would be no harm to a waterbody habitat and amphibians. There is no substantive information on this from either appeal party. However, as the ground (a) appeal is failing for other reasons and the whole appeal is not succeeding, this is not an issue that I need to consider.

Character and Appearance

16. Boseley Court is an impressive farmhouse dating from around 1700 with associated curtilage listed buildings. The traditional orchard alongside is an important part of the historical setting and significance of the listed building. The storage of modern diggers, dumpers and heavy machinery in the orchard have a jarring visual presence that conflict with the period appearance of the grade II listed building and they are alien to the wider rural setting. In the context of the National Planning Policy Framework (NPPF) the harm to the

significance of the designated heritage asset is less than substantial. The appellant's work as an agricultural contractor is not a public benefit that outweighs this harm. The development does not accord with the heritage, design and landscape protection aims of policy CSP.1 from the Forest of Dean Core Strategy (CS), policies AP.4 and AP.5 from the Forest of Dean Allocations Plan (AP) and the NPPF.

Highway Safety/Location

17. Based on the speed limit for the road, the required visibility splays, to allow the drivers of vehicles emerging from the appeal site to see oncoming vehicles, are not available particularly looking to the right. It may be that slow-moving agricultural vehicles use the roads in the area. However, the road is also used by faster moving cars and vans, thus making it essential that the appropriate visibility splays are achieved. In the absence of data to show that vehicle speeds may be less than the national speed limit or how the necessary splays may be achieved without harming the rural scene, the use of the appeal site access poses an undue risk to highway safety.
18. The site is also in the countryside contrary to the sustainable development strategy of the CS that seeks to concentrate new development in settlements and the need for a rural location for this use has not been justified. The development fails to meet the development location aims of CS policy CSP.4.

Ground (a) Conclusion

19. Nothing else raised outweighs my findings above. Therefore, I conclude that planning permission should not be granted for the matters stated in the EN. As such, the ground (a) appeal also fails.

Ground (f)

20. The requirements of the EN, in short, seek to cease the unauthorised use and for all associated storage to be removed. It also requires the hardstandings to be removed and for the land to be put back to its original condition. Therefore, the purpose of the EN falls into s173(4)(a) of the 1990 Act which is to remedy the breach of planning control by discontinuing any use of the land and restoring it to the condition before the breach took place. As the steps do no more and no less than what is necessary to achieve that purpose, they are not excessive. Therefore, the ground (f) appeal must also fail.

Ground (g)

21. The EN requires the unauthorised use to cease within 1 month, but for the vehicles and stored items to be removed within 3 months. It seems to me that whilst the vehicles/plant etc are allowed to be there for two months after the first month, the use of the land would still subsist. The two time periods therefore need to be equal. Although the appellant has suggested that 12 months would be appropriate to comply with steps (a) to (d), six months to my mind would strike the right balance between bringing the breaches of planning control to an end and what needs to be done to clear the site and put the land back to how it was. Therefore, no variation is needed to step (d).
22. I have taken into account that the coronavirus lockdown has eased since the appeal was made and, as such, I do not envisage that the existing curbs on

economic activity and the movement of people should unduly affect compliance with the ENs requirements.

23. To this extent the ground (g) appeal succeeds.

Conclusion

24. For the reasons 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 application deemed to have been made under section 177(5) of the 1990 Act as amended.

Gareth Symons

INSPECTOR