
Appeal Decision

Site visit made on 21 September 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2020

Appeal A Ref: APP/C1625/C/20/3249765

**Land Opposite the New Inn, Waterley Bottom, North Nibley,
Gloucestershire GL11 6EF**

- 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 Mrs Katie Howse against an enforcement notice issued by Stroud District Council.
- The enforcement notice was issued on 21 February 2020.
- The breach of planning control as alleged in the notice is the carrying out on agricultural land of excavations or engineering operations compromising of alterations to an existing simple farm access leading from the unclassified road bounding the south of the site onto the land. The formation of a concrete access ramp from the highway onto the land and the excavation of the existing landscape immediately inside the referred to access, to provide a flat area. This excavation has resulted in a 1.5m high vertical bank cut being irregularly into the landscape for a length of approximately 43m. The storage of vehicles, trailers, plants, containers and equipment on agricultural land, without planning consent.
- The requirements of the notice are:
 1. Remove the unauthorised engineered works to the simple field access leading from the unclassified road to the south of the site, remove the laid concrete access ramp and return the land to its former condition.
 2. Re-instate the excavated landscape to its former condition.
 3. Re-instate the developed flat surface area of the land to its former condition.
 4. Remove from the land all the stored motor vehicles, trailers, plant, machinery, skips and containers.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: No further action is taken.

Appeal B Ref: APP/C1625/C/20/3249766

**Land Opposite the New Inn, Waterley Bottom, North Nibley,
Gloucestershire GL11 6EF**

- 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 D Howse against an enforcement notice issued by Stroud District Council.
- The enforcement notice was issued on 21 February 2020.
- The breach of planning control as alleged in the notice is the carrying out on agricultural land of excavations or engineering operations compromising of alterations to an existing simple farm access leading from the unclassified road bounding the south of the site onto the land. The formation of a concrete access ramp from the highway onto the land and the excavation of the existing landscape immediately inside the referred to access, to provide a flat area. This excavation has resulted in a 1.5m high vertical bank cut being irregularly into the landscape for a length of approximately 43m.

The storage of vehicles, trailers, plants, containers and equipment on agricultural land, without planning consent.

- The requirements of the notice are:
 1. Remove the unauthorised engineered works to the simple field access leading from the unclassified road to the south of the site, remove the laid concrete access ramp and return the land to its former condition.
 2. Re-instate the excavated landscape to its former condition.
 3. Re-instate the developed flat surface area of the land to its former condition.
 4. Remove from the land all the stored motor vehicles, trailers, plant, machinery, skips and containers.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: No further action is taken.

Decision

1. Since the Notice is found to be a nullity, no further action will be taken in connection with the appeals. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act as amended.

Matters concerning the notice

2. The appellants argue that the Notice does not clearly set out the reasons for issuing it. Section 173(10) of the Town and Country Planning Act 1990 (the Act) states that an enforcement notice must specify such matters as may be prescribed in regulations. Regulation 4 of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (ENAR) states that *"An enforcement notice issued under section 172 of the Planning Act shall specify— (a) the reasons why the local planning authority consider it expedient to issue the notice; (b) all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice; and (c) the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise."*
3. Section 4 of the Notice refers to the National Planning Policy Framework in relation to decision-making in Areas of Outstanding Natural Beauty. It also refers to Policy ES7 of the Stroud District Local Plan 2015 and then goes on to describe the site. Reference is made to the planning application¹ for *"Erection of agricultural/equestrian building. Change of use of land to mixed use of agriculture/equestrian use"* and the reasons for the refusal of this application are cited. The reasons for refusal only relate to the building and the retaining wall. No reference is made to any of the elements of the allegations set out in the Notice in either the description of the development nor the reasons for refusal. The only development referred to in the reasons for refusal of the application is the erection of the building and the retaining wall, which are not mentioned in the allegations set out in the Notice. The final paragraph of section 4 of the Notice refers to harm to the landscape and natural beauty of the AONB. However, this is only in respect of the various items stored on the site, which I shall address below.
4. The breach of planning control as alleged in the enforcement notice (the Notice) refers to "The storage of vehicles, trailers, plants, containers and

¹ Council ref: S.19/0608/FUL

equipment on agricultural land, without planning consent.” This allegation is not operational development and therefore reads as alleging a material change of use of the land. However, in their evidence, the Council is not arguing as such. Accordingly, were the Notice not found to be a nullity, it could have been corrected by removing this part of the allegation and requirement 4), which relates to it. I am satisfied that such a correction would not have caused injustice to the parties. If the Notice makes no reference to storage at all, the Council will be free to enforce separately against that use, if they consider it to have taken place and is expedient to do so.

5. It is vitally important that anyone served with a copy of an enforcement notice should be able to understand, from the outset, the reasons why the local planning authority issued the notice. The harm alleged in section 4 of the Notice, as set out in the reasons for the refusal of planning application ref: S.19/0608/FUL, only refers to the building, the retaining wall and the change of use, none of which form part of the alleged breach of planning control. Whilst harm is alleged as a result of the storage, for the reasons given above, this should be omitted from the Notice in any event. No reference is made to why it is expedient to issue the Notice for the access, concrete ramp and excavated flat area, which are the matters alleged as the breach of planning control in the Notice. Consequently, the Notice fails to comply with the requirements of the Act and the ENAR. The Notice is therefore defective on its face and a nullity.

Conclusion

6. I conclude that the Notice is a nullity. In these circumstances, the appeals on the grounds set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

INSPECTOR

Alexander Walker