



Appeal Decisions

Site visit made on 24 November 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2020

Appeal A Ref: APP/M3645/C/20/3253643

Appeal B Ref: APP/M3645/C/20/3253644

Appeal C Ref: APP/M3645/C/20/3253645

Land at Eulyn Farm, Croydon Barn Lane, Horne, Surrey RH9 8JP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A Mr Matthew Hitchings, Appeal B is made by Mr Peter David Hitchings and Appeal C is made by Ms Pauline Janet Hitchings, all being against an enforcement notice issued by Tandridge District Council.
- The enforcement notice was issued on 30 April 2020.
- The breaches of planning control alleged in the notice are:
 1. On land to the north of Eden Brook, alterations to the land levels without complying with condition 2 of planning permission reference TA/2017/1501 granted on 24 November 2017 coupled with the associated unauthorised use of the land for the importation, storage and processing of waste materials. The development to which the permission relates is the erection of an equestrian sand school and construction of a track way from an existing access. The condition in question is No 2 which states that:

This decision refers to drawing numbers fpes 1.0A, 2.0A, 3.0A and 3.1 scanned on 9 and 22 November 2017. The development shall be carried out in accordance with the approved drawings. There shall be no variation from these approved drawings.

The notice alleges that the condition has not been complied with, in that alterations have been made to land levels without complying with the condition.
 2. On land to the south of Eden Brook, the use of the land for the storage of imported inert waste materials (both processed and unprocessed materials).
- The requirements of the notice are:
 - i. *Cease the importation, deposit, storage and processing of inert waste materials, top soil and aggregate that are not required to construct the sand school and track way approved under application reference TA/2017/1501.*
 - ii. *Remove from the land (subdivided into sections labelled 1, 2, 3, 4 and 5) outlined in green on the attached Plan B all inert waste materials, top soil and aggregate that are not required to construct the sand school and track way approved under application reference TA/2017/1501.*
 - iii. *Reinstate the land north of Eden Brook to the layout and levels as shown on drawing numbers 2.0A and 3.0A which were approved under application reference TA/2017/1501 for the "Erection of an equestrian sand school and construction of a track way from an existing access."*
 - iv. *Re-spread topsoil, prepare seedbed through cultivation and rolling, and grass seed all cleared areas of land to the south of Eden Brook.*
- The periods for compliance with the requirements are:

Step i – 1 month.

Step ii:

 - a. Removal from the section of land outlined in green and labelled "1" on the attached Plan B – 4 months.

- b. Removal from the section of land outlined in green and labelled "2" on the attached Plan B – 5 months.
 - c. Removal from the section of land outlined in green and labelled "3" on the attached Plan B – 6 months.
 - d. Removal from the section of land outlined in green and labelled "4" on the attached Plan B – 7 months.
 - e. Removal from the section of land outlined in green and labelled "5" on the attached Plan B – 8 months.
 - Step iii – 9 months
 - Step iv – 9 months
- The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. The appeals succeed in part and the enforcement notice is upheld with variations as set out below.
2. It is directed that the enforcement notice is varied by:
 - i) the addition of "and (b)" after the words "Section 171A(1) (a)" in the first paragraph;
 - ii) the addition of the words "in that the levels of the land exceed those permitted by the condition" after the words "planning permission reference TA.2017/1501" in the description of the breach of planning control relating to the land north of the Eden Brook;
 - iii) the deletion of the comma followed by the words "topsoil and aggregate" in the requirement i. of paragraph 5 of the notice and the addition of the words at the end of that requirement "other than as may be required in connection with development carried out under Article 3 and Part 6 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)";
 - iv) the deletion of paragraph iii. of paragraph 5 of the Notice and its substitution with the words "Within the area of the approved sand school and track, alter the levels of the land so as not to exceed the finished levels shown on the approved plans under application reference TA/2017/1501 for the "Erection of an equestrian sand school and construction of a track way from an existing access.";
 - v) the deletion of Plan B attached to the notice and its substitution with an amended Plan B attached to this Decision, and
 - vi) the addition of the words "excluding that land hatched in black" after the words "Plan B" in Steps ii) a. and c.
3. Subject to the variations, the enforcement notice is upheld.

Procedural matters

4. The notice states that it is issued under Section 171A(1)(a) of the Act; however, the notice alleges both the carrying out of development without the required planning permission as well as the failure to comply with a condition attached to a planning permission. Thus, the notice also falls under the ambit of Section 171(1)(b) of the Act. I have a duty to get the notice in order if I can

do so without prejudice to the appellants or the local planning authority. The appellants are clear as to what the breaches entail and therefore I shall correct the notice to refer to the correct sub-section of the Act and to specify what the breach of condition entails as no prejudice would arise in this case.

5. Plan B attached to the notice refers to the steps to be taken to comply with the notice. However, it encompasses land outside of the enforcement notice site. I have a duty to get the notice in order if I can do so, and my powers of correction are subject only to the requirement that neither the appellants nor the local planning authority should be prejudiced. The Council has submitted an amended plan which reduces the scope of the notice requirements, and thus the appellants will not be prejudiced by my correcting the notice to refer to the amended Plan B.
6. The appellants' grounds of appeal claim that the site has historically been used for the storage of topsoil and aggregates for use on the farm and sale off site. This argument goes beyond the remit of an appeal on ground (f) and is a ground of appeal which falls within ground (d), 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. The Council has addressed this matter in its appeal submissions, and I shall therefore deal with it as a "hidden" ground of appeal.

Reasons

Appeals on ground (d) – that the time for taking enforcement action has passed

7. In order to succeed on an appeal on this ground, it is necessary to establish that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. the onus of proof lies with the appellants, with the test being on the balance of probabilities. The claim that the site has historically been used for the storage of topsoil and aggregates for use on the farm and sale off site has not been supported by any evidence – it is mere assertion. Accordingly I cannot be satisfied, on the balance of probabilities that the time has passed for taking enforcement action in respect of the storage of topsoil and aggregates. The appeal on ground (d) therefore fails.

Appeals on ground (f) – that the notice exceeds what is necessary to remedy the breach

8. Section 173(3) of the Act says an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes. Section 173(4) says that those purposes are:
 - (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
 - (b) remedying any injury to amenity which has been caused by the breach.
9. It is clear in this case that the purposes sought by the Council in the notice fall within s.173(4)(a), in that the notice seeks both to remedy the breach and to

- make the development comply with the terms of planning permission for the approved sand school and access track.
10. Requirement iii of the notice requires that the levels north of the Eden Brook be reinstated to the layout and levels shown on the plans approved as part of the permission for the sand school. However, those plans do not show the original ground levels, only the final levels. Moreover, those plans show land outside of the site of the sand school. I consider that the requirement is either unclear or excessive.
 11. Requirement ii requires the removal of all inert waste materials, top soil and aggregate that are not required to construct the approved sand school and track way, and I consider that this requirement is capable of being clearly understood and enforced. I shall therefore amend requirement iii to require, within the area of the approved sand school and track, that levels be altered so as not to exceed the finished levels shown on the approved plans. This would allow further importation of materials to finish the approved development
 12. The notice alleges the use of the land north of the Eden Brook for “the importation, storage and processing of inert waste materials”. The steps to be taken include the cessation of the “importation, deposit, storage and processing of inert waste, top soil and aggregate” that are not required to construct the approved works. The requirements add the word “deposit” which is not included in the description of the alleged breach, but I take no issue with that; the word “importation” can reasonably be interpreted to include the deposit of materials. However, the requirements also include the words “topsoil and aggregate”, which are not referred to in the allegation. Whilst topsoil and aggregate may fall within the scope of “inert waste materials”, the Council has clearly distinguished them from such a category. I therefore consider that the additional words go beyond the description of the breach, and I shall therefore delete them from the requirements.
 13. The requirements of the notice would prohibit the importation of material required for development permitted under Class 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Notwithstanding that prior approval of the Council may be required for such development in certain circumstances, the requirements of the notice would prevent the appellants from utilising lawful rights granted under the Order. I shall therefore vary the notice to exclude development carried out under Class 6 of the Order.
 14. Accordingly, to the extent indicated above, the appeal succeeds on ground (f), and I shall vary the notice accordingly.
Appeals on ground (g) – that the period for compliance falls short of what should reasonably be allowed
 15. The appellants argue that having implemented that planning permission, there is no time limit for its completion, and that the requirement to remodel the land in accordance with the planning permission within 9 months is unreasonable.
 16. The requirements do not require the planning permission to be completed; as varied, they merely require that the levels on the site of the approved sand school and track to be reduced so as not to exceed those approved. If the appellants wish to complete the approved development, the requirements

would not preclude it. I therefore consider that the phased compliance periods provide a reasonable time in which to comply with the requirements of the notice. The appeal on ground (f) therefore fails.

Conclusion

17. For the reasons given above, I conclude that some of 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 appeals on ground (f) succeed to that extent. The appeals on grounds (d) and (g) fail for the reasons explained above.

JP Roberts

INSPECTOR



Plan

This is the plan referred to in my decisions dated: 17 December 2020

by **JP Roberts BSc(Hons) LLB(Hons) MRTPI**

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Not to scale

