



Appeal Decision

Site visit made on 13 July 2020

by Mrs H M Higenbottam BA (Hons) MRTPI

76 appointed by the Secretary of State

Decision date: 21 December 2020

Appeal Ref: APP/P1940/C/19/3241446

Land at rear of 2-3 Station Road, Kings Langley, Hertfordshire

- 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 Vicky Cooper (Pure Bricks Ltd) against an enforcement notice issued by Three Rivers District Council.
 - The enforcement notice was issued on 11 November 2019.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the laying of hard-core, erection of CCTV pole, 3 no. lighting columns, close boarded timber fencing, laying of concrete blocks and erection of an earth bund.
 - The requirements of the notice are:
 1. Remove all hard-core aggregate and associated materials (including concrete ground markers and timber sleepers) brought onto the Land.
 2. Following compliance with Step 2 above dismantle the earth bund (shown marked between X-X on the attached Site Map and re-distribute the earth evenly across the whole of the Land.
 3. Permanently remove all equipment brought onto the Land which includes the CCTV pole, 3 no. lighting columns, close boarded timber fencing (shown marked between Y-Y and Z-Z on the attached Site Map); concrete blocks and traffic bollards from the Land.
 4. Following compliance with Steps 1, 2 and 3 above re seed the Land with a native grass seed mix.
 5. Following compliance with Step 4 above, re-seed any part of the Land where the native grass seed mix dies or is dying within 5 years from the date this Notice takes effect.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - The insertion of the words 'on the Land hatched black on the attached Site Map' after the words 'earth bund' in paragraph 3.
- and varied by:
- The deletion of requirements 2, 4 and 5, in full, from paragraph 5
 - Deletion of the words 'and traffic bollards' and 'and Z-Z' and the insertion of the word 'and' before the words 'concrete blocks' in requirement 3 in paragraph 5.
 - Renumber requirement 3 to requirement 2 in paragraph 5.

- Insertion of the following words, after requirement 2, '3. Restore the Land hatched black on the attached Site Map, to its condition before the breach of planning control took place.' in paragraph 5.
- Delete the plan from the enforcement notice and substitute it with the plan attached to this decision.

Subject to this correction, and variations, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

2. The Council state that they 'varied' the Notice on 25 November 2019 (the varied Notice) pursuant to section 173 of the Act. Section 173 relates to the contents and effect of a notice and does not include a power to vary a notice once served. Section 173A of the Act allows a local planning authority to either withdraw an enforcement notice or waive or relax any requirement of such a notice or extend the compliance period.
3. There is no record of the Council withdrawing the Notice issued on the 11 November 2019 the subject of this appeal. I am also not aware of any appeal against the varied Notice.
4. The varied Notice alters requirements 2 and 3 as follows:
 - Following compliance with Step 1 above, dismantle the earth bund (shown marked between X-X on the attached Site Map) and redistribute the earth evenly across that part of the Land shown hatched on the attached Site Map.
 - Permanently remove all equipment brought onto the Land which includes the CCTV pole, 3 no. lighting columns, close boarded timber fencing (shown marked between Y-Y on the attached Site Map).
5. The varied Notice not only varies the requirements but includes and identifies a different area in the plan attached to the notice. The Council confirm that the plan was amended to remove the area of hardsurfacing adjacent to the florist shop. However, the line to the rear of the florist shop was unintentionally drawn further forward.
6. I will determine the appeal on the basis of the evidence before me in relation to the original Notice issued on 11 November 2019.

The Notice

7. The allegation refers to close boarded timber fencing and it is only in the requirements that reference is made to the position of fencing and the plan attached to the Notice. On the original Notice, requirement 3 identifies fencing Y-Y and Z-Z. However, there is no 'Z' annotation on the plan and the location is not described within the Notice. The Council has through its revised Notice removed any reference in the requirements to fencing between Z-Z. As such, I will correct the Notice to remove reference to fencing between Z-Z in requirement 3.
8. As it is clear that the Council did not intend to include the hardsurfacing adjacent to the florist shop in the area attacked by the Notice, I will vary the plan to exclude this area from the identified area.
9. This correction and variation will not cause injustice or prejudice to either party as it follows the Council's stance on the area of land attacked and the removal

of the fence Z-Z in the revised Notice and correspondence which results in a reduction in the requirements for the appellant and the area the subject of the Notice.

Whether the fence Y-Y does not amount to a breach of planning control

10. There is no formal appeal on ground (c) before me. Nonetheless, the appellant suggests that he believes the fence Y-Y does not breach planning law. In a ground (c) appeal it is for the appellant to demonstrate that what is alleged does not amount to a breach of planning control.
11. The appellant has not demonstrated that the fence Y-Y complies with all the limitations and conditions of Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended, which permits the erection, construction, maintenance, improvement or alteration of a gate, fence wall or other means of enclosure.
12. The Council state that the fence Y-Y does not sit adjacent to the neighbouring property 'Flintstones'. In its view the fencing does not act as a means of enclosure and does not constitute permitted development.
13. On the evidence before me I am unable to conclude that the fence Y-Y forms a means of enclosure and complies with the limitations and conditions of Class A. As such, it has not been demonstrated that the fence is permitted development or that it does not amount to a breach of planning control.

Appeal on ground (f)

14. This ground of appeal is that the requirements of the notice are excessive and lesser steps would overcome the objections. The Council state that the purpose of the Notice was to both remedy the breach of planning control by restoring the Land to its condition before the breach took place. It also states that it is to remedy injury to amenity, which has been caused by the breach, by re-seeding part of the Land with a native grass seed mix.
15. The appellant considers that the following are excessive:
 - Requirement 2 requires the earth to be redistributed over the whole of the Land. The earth was not taken from all of the Land and this is excessive.
 - Requirement 3, there is no Z-Z marked on the site map attached to the Notice.
 - The concrete blocks and traffic bollards are there to protect the Land from any unauthorised parking. This is a reasonable precaution taken by the landowner to protect the area.
 - Requirement 4, there was no grass present on the Land prior to the work and there was only overgrown bramble.
 - Requirement 5, it is unreasonable to require maintenance of the grass for five years.
16. In relation to the earth bund (requirement 2) the appellant states that the earth was not taken from all of the Land and therefore the requirement should not require the earth to be distributed over all the Land.
17. In relation to requirement 4, that the Land should be seeded with grass, there is no substantiated evidence that the Land was covered in grass prior to the unauthorised development. The appellant states that there was no grass and

the vegetation was brambles. Requirement 4 could, on the evidence available, result in an improvement to the appeal site. As such this requirement is excessive.

18. In order to address the matters in relation to the earth bund and the requirement 4 issue I will therefore vary the Notice removing requirements 2 and 4 and substituting them with a single requirement to return the Land to the condition it was in before the breach of planning control took place. This will remedy the breach of planning control and thus address the purposes of the Notice.
19. In relation to requirement 3, traffic bollards are not identified within the allegation. Therefore, requiring the removal of these is excessive. The concrete blocks are within the allegation and as they are part of the breach of planning control and the purpose of the Notice is to remedy the breach of planning control, a requirement to remove them is not excessive. I will vary requirement 3 to remove reference to traffic bollards.
20. In relation to requirement 5, this seeks ongoing maintenance of the grass for five years. However, requirements should not extend beyond the compliance period of the notice and as such this requirement is excessive. I will therefore delete this requirement.
21. For the reasons given above I consider the requirements are excessive in relation to requirements 2, 3 (in part), 4 and 5. I will direct that the enforcement notice is varied accordingly prior to upholding it. The appeal under ground (f) succeeds to that extent.

Hilda Higenbottam

Inspector



Plan

This is the plan referred to in my decision dated: 21 December 2020

by **Mrs H M Higenbottam BA (Hons) MRTPI**

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SITE MAP Not to scale

