



Appeal Decisions

Site visit made on 7 December 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2021

**Appeal Ref: Appeal A:APP/W1525/C/20/3249470, Appeal B: APP/W1525/C/20/3249471 & Appeal C: APP/W1525/C/20/3249472
Land at Ash Tree Farm, Bishops Stortford Road, Roxwell, Chelmsford, Essex CM1 4LP**

- 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 Gary Walker (Appeal A), Mr Jamie Walker (Appeal B) and Mr George Walker (Appeal C) against an enforcement notice issued by Chelmsford City Council.
 - The enforcement notice was issued on 20 March 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land for the deposit, storage and transfer of waste and other material.
 - The requirements of the notice are:
 - (i) Cease using the land for the deposit, storage and transfer of waste and other materials;
 - (ii) Remove from the land all earth, soil, aggregate, building materials, waste materials and any other material to a ground level in line and otherwise contiguous with the ground level of the adjoining Groundworker's Contractors Yard;
 - (iii) Re-seed the land with grass seed.
 - The period for compliance with the requirements is:
 - (i) Compliance with steps (i) and (ii) shown above within six months of the effective date of this notice.
 - (ii) Compliance with step (iii) shown above to be completed by the 30 September 2020.
 - The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. The appeals are allowed and the enforcement notice is varied by, under section 6 Time for Compliance:
 - After the words 'Compliance with steps (i) and (ii) shown above within' the deletion of 'six' and the substitution of 'nine' months as the period for compliance.
 - After the words 'Compliance with step (iii) shown above to be completed' the deletion of 'by the 30 September 2020' and the substitution of 'within nine months of the effective date of this notice' as the period for compliance.

Subject to these variations the enforcement notice is upheld.

Reasons

2. An appeal on ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably

- be allowed. The appellants request that, due to Covid-19, the notice is put on hold until the Government inform that it is safe to carry on working as normal, suggesting the effects of Covid-19 will cause the business to close. The appellants also cite issues relating to the availability of staff and request a twenty-four-month period to undertake the work, with a compliance period until 24 April 2022.
3. The notice requires compliance with steps (i) and (ii) within six months of the effective date of the notice, the effective date being 24 April 2020, i.e. by 24 October 2020. The notice requires compliance with step (iii), which would need to be carried out after steps (i) and (ii), to be completed by 30 September 2020. The notice is therefore clearly unreasonable in its requirements in this regard.
 4. A survey carried out in 2018 estimated the volume of material that needed to be removed to be 14,174 cubic metres, which equates to just over 25,000 tonnes of waste. Although there have been changes within the site since the survey was carried out, I have no subsequent survey before me and therefore no indication as to the precise quantity of material that needs to be removed. An interested party suggests the appellants have increased the mound of waste. Nevertheless, as demonstrated by the estimations provided, in the event that the mass of the material is different, the number of loads per day could be adjusted. This, however, will be dependent upon the availability of vehicles and drivers, which could be affected by the pandemic.
 5. Although restrictions¹ are ongoing, the waste industry has generally been able to continue to operate throughout the pandemic and I see no reason why such a significant period of time is required in this case. Extending the period for compliance to 24 April 2022 would be tantamount to granting a temporary planning permission, which is wholly unreasonable given the Council's reasons for taking enforcement action.
 6. Work to remove material from the site was underway at the time of my site visit and, despite the weather conditions, machinery was able to operate within the site. Having regard to the time that has lapsed since the enforcement notice was issued, I consider an additional 3 months would be sufficient to allow for any uncertainty as a consequence of the pandemic.
 7. Whilst it is not unusual to have staged periods for compliance where requirements can be undertaken sequentially, I do not consider one is necessary in this instance. A total of 9 months for all steps is sufficient and proportionate, taking into account the potential for delay which may be caused as a result of the Covid-19 pandemic.

Conclusion

8. For the reasons given above I conclude that a reasonable period for compliance is 9 months. I am varying the notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

M Savage

INSPECTOR

¹ As a result of Covid-19