



Appeal Decision

Hearing Held on 25 May 2021

Site visit made on 26 May 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 18 June 2021

Appeal Ref: APP/R4408/C/20/3263263

Land on the East side of Cat Hill Lane, Hoylandswaine, S36 7GD

- 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 James Peace against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The enforcement notice, numbered 2020\ENQ\00293, was issued on 19 October 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the carrying out of operational development under S55 of the Town and Country Planning Act; namely engineering operations including excavations to alter the profile of the land and laying aggregate material.
 - The requirement of the notice is to remove all unauthorised materials in their entirety, ensuring that the land is restored to its original condition before the breach of planning control took place.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

The Notice

3. Caselaw holds that the notice must tell the recipient fairly what they have done wrong and what they must do to remedy it.
4. The wording of the allegation in section 3 of the notice does not in itself accurately identify the breach of planning control alleged, and nor is the specific location of the development identified on the plan of the land attached to it. The Council's case is that the notice includes '*Appendix 1: Photographs showing the Unauthorised Development*' which taken together with the allegation identifies the operational development in the north western part of the land next to Cat Hill Clough. The appellant stated that he was unclear, even when considering the photographs, which particular operations were alleged as the breach of planning control, particularly in light of the fact that

there had been various works undertaken on the land over a duration of many years. Representations were made by an interested party in support of the Council's case who felt that the notice needed to be read as a whole, including the photographs, and the alleged breach was therefore clear.

5. The notice alleges '*operational development...namely engineering operations including excavations to alter the profile of the land and laying aggregate material*'. The four photographs appended to the notice show the side of the hill which has been partially excavated, a part-built track, a 'hole' created to extract sandstone and an earth mound. The appellant states that the grassed area in front of the earth mound (as shown on the photograph) had also been regraded as part of embankment works which commenced around 20 years ago. The appellant said that the works were not for the purpose of '*excavations to alter the profile of the land*', but rather to provide the access track and fencing, and that the notice was therefore incorrect. The wording of the allegation does not encompass all of the elements of the development shown in the photographs e.g. it does not include the creation of the earth mound or track or installation of fence posts. In addition, the photographs are not annotated to refer to the allegation or identify the alleged breach of planning control or the separate elements.
6. The requirement on the notice is '*Remove all unauthorised materials in their entirety, ensuring that the land is restored to its original condition before the breach of planning control took place.*' The requirement does not 'match' the allegation and remedy the breach of planning control as alleged as it requires the removal of '*unauthorised materials*' which are not referenced in the allegation or identified on the photographs. Indeed, the only material referred to in the allegation is in the context of '*laying aggregate material*' which seems, on reading solely the notice, to refer to the sandstone laid on the track.
7. The appellant's case is that he was unclear about what matters were stated to be a breach of planning control in the notice, and leading on from that, what would be required to remedy the breach. He had stopped further works on the site, including the erection of a fence, as he was unsure as to the extent of the notice (and indeed the photographs appended to the notice do show several newly erected fence posts although these are not referred to in the allegation).
8. Taking all of the above into account the notice is invalid for failing to specify with sufficient clarity the alleged breach. It is therefore necessary to consider whether it could be corrected without causing injustice. The appellant had included an appeal under ground (d), that at the date when the notice was issued no enforcement action could be taken, as he stated that his understanding was that the notice also covered the more historic works on the site. However, it was clear from the information submitted during the course of the appeal that this was not the Council's intention. The appellant would be caused an injustice if the notice were corrected to specify the development shown in the photographs as he stated that he had made his appeal based on the continuing works which took place over 20 years on the whole site. It may be that he would have wished to put his appeal in a different way if he had understood the notice to refer to the more limited works (for example by including an appeal on ground (a) and a deemed application for planning permission).

9. In addition, I am not able to itemise accurately, and with any degree of certainty, the elements of the development which were intended to constitute the breach of planning control based solely on the notice as it was issued. It may cause injustice to either party to attempt to correct the notice in this way.
10. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under the various grounds as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Zoë Frank

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr James Peace

FOR THE LOCAL PLANNING AUTHORITY:

Mr Chris Byrne, Planning Enforcement Officer

Mr Paul Doherty, Group Leader of Planning and Building Control

INTERESTED PERSONS:

Mr Joe Douglas

Mr William Buck