



Appeal Decision

Site visit made on 25 May 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd July 2021

Appeal Ref: APP/M9496/C/20/3263527

Land at Withamley House Farm, Bradfield, Sheffield 26 6HY

- 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 Martin Hague against an enforcement notice issued by Peak District National Park Authority.
- The enforcement notice, numbered 19/0217, was issued on 6 October 2020.
- The breach of planning control as alleged in the notice is engineering operations comprising the ongoing formation (through movement of material such as soil, rubble, rocky fill and loose rock, its deposit, compaction and moulding) of an artificial, man-made platform feature without the benefit of planning permission.
- The requirements of the notice are:
 - (i) Cease any further operations constituting the breach of planning control.
 - (ii) Remove all material deposited on the Land since 2015 and now comprising the platform feature described above, and reinstate the Land to the contour levels in place prior to the deposition of the material, resulting in the final landform of the Land blending with that of the surrounding land.
 - (iii) During the first complete August to September period after the notice takes effect, seed all areas of the Land with an acid grassland seed mix comprising the following species in the stated proportions:
 - Wavy hair grass (*Deschampsia flexuosa*) 10%
 - Common bent grass (*Agrostis capillaris*) 10%
 - Sheep's - fescue grass (*Festuca ovina*) 40%
 - Red fescue grass (*Festuca rubra*) 5%
 - Sweet vernal grass (*Anthoxanthum odoratum*) 5%
 - Heather (*Calluna vulgaris*) 30%The seed mix shall be lightly broadcast onto the ground at a rate of 10g/m², mixed with sand as a spreading medium and then lightly rolled, trod or equivalent so as to create contact between the seed and the ground.
The ground should not be fertilised in any way.
 - (iv) The site shall be monitored 10 months after step (iii) is carried out. If at this point there is less than 50% rate of germination (identified by more than 50% of land seeded whilst carrying out step (iv) showing no visible vegetation ground cover comprising the seed mix species specified in (iv), the land shall be seeded again, with the seed mix stated in step (iii), prior to the expiration of the September immediately following the monitoring required by this step.
The seed mix shall be lightly broadcast onto the ground at a rate of 10g/m², mixed with sand as a spreading medium and then lightly rolled, trod or equivalent so as to create contact between the seed and the ground.
The ground should not be fertilised in any way.
 - (v) The site shall be monitored 22 months after (iii) is carried out. If at this point there is a less than 70% rate of germination (identified by more than 30% of land seeded whilst not carrying out step (iii) showing no visible vegetation ground cover comprising the seed mix species specified in (iv), the land shall be seeded again, with the seed mix stated in step (iii), prior to the expiration of the September immediately following the monitoring required by this step.
The seed mix shall be lightly broadcast onto the ground at a rate of 10g/m², mixed

with sand as a spreading medium and then lightly rolled, trod or equivalent so as to create contact between the seed and the ground.

The ground should not be fertilised in any way.

- The period for compliance with each of the requirements are:
 - (i) One day.
 - (ii) 9 months.
 - (iii) 12 months.
 - (iv) 24 months.
 - (v) 36 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by:

The deletion of the words "Remove all material deposited on the Land since 2015 and now comprising the platform feature described above, and reinstate the Land to the contour levels in place prior to the deposition of the material, resulting in the final landform of the Land blending with that of the surrounding land" and substitute the words "Remove all material deposited on the Land since 2015 and now comprising the platform feature described above, and reinstate the Land to the contour levels and condition in place prior to the deposition of the material" of requirement (ii); and

The deletion of requirements (iii), (iv) and (v) in paragraph 5: WHAT YOU ARE REQUIRED TO DO.

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

Ground (b) appeal

2. This ground is that engineering operations comprising the ongoing formation of an artificial, man-made platform feature has not in fact occurred. The burden of proof is on the appellant and the test is the balance of probability.
3. The appellant claims that the soil, rubble, rocky fill and loose rock has been generated by the implementation of 2 planning permissions and complying with the approved landscaping scheme. He goes on to claim that the material excavated could not be removed from the property as that would constitute a mining operation, for which planning permission has not been granted. Rather than creating stockpiles of materials, the appellant advises that he has temporarily stored the materials along the access track that leads between the higher and lower land in his ownership.
4. There is no dispute that the deposited material has been generated by the implementation and compliance with the 2 planning permissions. It would be reasonable to assume that excavated stone and soil, waste materials and debris associated with the implementation and compliance with the 2 planning permissions would be stored ready for disposal or re-use. The material has instead been deposited, moulded and compacted to form the platform feature.

5. The appellant alleges that the deposited material is being stored "*immediately adjacent to the historic and existing access route leading down to lower land*"¹. I saw during my site visit that the artificial, man-made platform feature has encompassed the access route referred to by the appellant, and it provides a relatively smooth, shallow graduated surface leading down into the lower field. Regardless of whether the artificial, man-made platform is temporary or not, the materials deposited have been moulded and compacted to provide access into the lower field. I therefore find that the materials are not just being stored, as the appellant claims.
6. It is clear from the evidence that the amount of material deposited is substantial, and it would be reasonable to assume that heavy machinery would have been required to deposit, mould and compact the material to form the artificial, man-made platform. Such work would constitute an engineering operation, which s55(1) of the 1990 Act confirms is development requiring planning permission. I have not been made aware that planning permission has been granted for this development or that it was included in either of the 2 planning permissions that generated the material. Furthermore, the appellant has not claimed that the artificial, man-made platform benefitted from planning permission granted under Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Even if he had, there is insufficient evidence before me to determine whether the works could have been permitted development.
7. For the reasons given above, I find that the matters alleged have occurred and the appeal on ground (b) fails.

Ground (f) appeal

8. Having regard to the requirements set out in section 5 of the notice, its purpose is to remedy the breach of planning control. To succeed on this ground, the appellant must show that the requirements of the notice exceed what is necessary to remedy the breach.
9. The appellant argues that step (ii), requiring the removal of "*all material deposited on the Land since 2015*" is ambiguous and unclear as to what would be required, given that the material cannot be removed from the holding. However, step (ii) states "*Remove all material deposited on the Land since 2015 and now comprising the platform feature* [my emphasis]". Furthermore, the Land edged red on the plan attached to the notice does not encompass the extent of the appellant's land holding. As such, the deposited material recovered from compliance with step (ii), could be stored elsewhere on the holding until the excavated material can be re-used on the holding and arrangements can be made for the disposal of the waste material. In terms of the reinstatement of the land contours, the appellant is best placed to know what these were. I find step (ii) to not be ambiguous and it is clear what the appellant is required to do.
10. S173(4)(a) of the 1990 Act states that the breach of planning control can be remedied by "*restoring the land to its condition before the breach took place*", amongst other things. Steps (iii), (iv) and (v) impose a specific planting plan for the Land and a long-term maintenance scheme for that planting. These

¹ Page 2 of the appellant's Grounds and Facts document

steps go beyond what is required to restore the Land to its condition before the breach took place and I shall delete them.

11. While step (ii) secures the reinstatement of the Land's former contours, it should be varied to include returning the Land to its condition before the breach took place. Also, for clarity, it is unnecessary for step (ii) to include the words "*resulting in the final landform of the Land blending with that of the surrounding land*". Given the minor nature of these variations, it would be no more onerous than those first issued, and no injustice would be caused. Accordingly, the appeal on ground (f) succeeds in so far as the notice is varied.

Ground (g) appeal

12. Compliance with the varied notice requires potentially complex operations to be carried out. The appellant claims that a time constraint should not be imposed as discussions need to take place with the Council to determine where the deposited material can be moved to.
13. S173(9) requires the notice to specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased. The compliance period for step (i) is one day, which given the nature of the operations, is reasonable. While there may be a need to bring specialist equipment to site in order to comply with step (ii), 9 months does not fall short of what is reasonable to secure the removal of material deposited on the Land since 2015 that comprises the platform feature, and the reinstatement of the Land to its former contour levels and condition prior to the breach of planning control occurred. This period is also sufficient to accommodate any discussion between the appeal parties. On this basis, the appeal fails on ground (g).

Overall conclusion

14. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is correct. The appeal on ground (b) fails. For the reasons given above, requirement 2 shall be varied and requirements (iii), (iv) and (v) shall be deleted. The periods of compliance associated with requirements (i) and (ii) are however reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

M Madge

INSPECTOR