



Appeal Decisions

Site visit made on 21 June 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 21 July 2021

Appeal A Ref: APP/C1625/C/21/3272045

Appeal B Ref: APP/C1625/C/21/3272046

**Land Opposite the New Inn, Waterley Bottom, North Nibley,
Gloucestershire GL11 6EF**

- 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 Katie Howse (Appeal A) and Mr David Howse (Appeal B) against an enforcement notice issued by Stroud District Council.
- The enforcement notice was issued on 2 March 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the carrying out on agricultural land located within the Cotswold Area of Outstanding Natural Beauty (AONB), of excavations, building and engineering operations comprising the formation of a concrete ramp, large expanse of concrete slab and engineered surfaces in the proximity of the southern boundary access gate and the unauthorised erection of a building on part of the engineered surfaces. The unauthorised deposit and storage of imported waste materials on the expanded engineered flat surface to the east of the unauthorised building. The unauthorised engineered excavations have resulted in an unsupported 1.5m high vertical bank, being cut irregularly into the Cotswold AONB landscape for a length of approximately 43m.
- The requirements of the notice are: 1) Remove completely the unauthorised agricultural open sided barn from the land on which it has been built; 2) Remove the unauthorised engineered works arising from the point of entrance onto the land at its southern boundary entrance gates, by removing from the land the now established concrete slab; 3) Remove from the land all imported waste materials; 4) Reinstatement of the land to its former condition of gentle sloping undulating grassland field, as it was at the time of the present owners purchase and its evidenced form prior to that of February 2019.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Application for costs

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

The Notice

2. The appellant has raised a number of concerns in relation to the validity of the enforcement notice and the Council has made comments in response. I deal with each of the appellant's concerns in turn.
3. Whilst the notice has the same reference number as a separate notice issued by the Council previously, this does not create any undue uncertainty since the appellant would have been able to distinguish the present notice by its content. The appellant has stated that covering letters sent with the notice to legally different parties set out contradictory facts in relation to the notices and when they took effect, with one such letter stating that the notice had already come into effect.
4. Whilst I can understand this might be confusing, and no doubt was erroneous, this does not appear to have resulted in any injustice since the appellant was able to submit a valid appeal in time. Further, I note that the enforcement notice plan does not include all areas of the appellant's land holding. However, the notice is not legally required to include this.
5. The appellant comments that the position of the alleged unauthorised building, excavation, and engineering works, and imported waste materials are not identified on the plan attached to the enforcement notice. It is submitted that this renders the notice uncertain.
6. I do not accept that submission for the reasons given below. Taking into consideration the considerable detail contained within the reasons in paragraph 4 of the notice, I consider that the appellant could tell with reasonable certainty in what respects it has been alleged that the land has been developed in breach of planning control. Substituting the word 'building' with 'agricultural open sided barn' as referred to in the requirements would clarify the building in question and is a minor correction that can be made without injustice.
7. As regards the requirements, I note that requirement 1 stipulates that the building should be removed 'from the land on which it has been built'. The appellant suggests that this creates confusion as to whether it would be permissible to relocate the building to another part of the appellant's landholding. However, I note that 'land' pursuant to paragraph 2 of the notice is a defined term, being that outlined in red on the enforcement notice plan.
8. On this basis, I consider that the meaning of requirement 1 is that the building should be removed from the land as edged red. That said, the wording 'on which it has been built' does not add anything to that stipulation, and therefore I shall correct the notice to delete this additional wording. Since this correction is for clarity only, this would not result in any injustice.
9. The appellant submits that requirement 2 does not make it clear what engineered works are required to be removed, since these are not cross referenced to a plan. I find though again that, bearing in mind the detail contained within the entirety of the notice, it is possible to tell with reasonable certainty from the four corners of the notice what is required in this regard. In the interests of clarity, a minor correction could be made to specifically refer to the ramp which is referenced in the allegation. Since this correction would not alter the nature of the requirement itself, this would not result in any injustice. There is no reference in requirement 2 to 'excavations' and thus no stipulation

to 'remove' excavations as the appellant suggests. Rather, the allegation of undertaking excavations would be remedied through compliance with requirement 4 by restoring the land to its previous condition.

10. As regards requirement 3, the appellant comments that the waste material referred to is not identified by reference to a plan, and that it is not clarified what 'waste materials' are. However, the location of those materials is identified in the reasons for issuing the notice by reference to the location of the alleged unauthorised building, and they are described as 'landscape waste materials', which in my view provides reasonable certainty in these respects. However, a minor correction of this requirement by inclusion of the word 'landscape' would clarify the position and would not result in injustice.
11. Requirement 5 seeks to restore the land to its condition before the breach took place and in doing so sets out the Council's description of the land prior to the breach, with reference to the date of the appellant's purchase of the land. The appellant's view is that the description given as to the previous state of the land renders the requirement uncertain. My view is that it is plain that this requirement seeks to restore the land to its former condition.
12. It is not though, in my view, necessary to stipulate the condition of the land prior to the breach since the appellant is best placed to know its previous condition. I can therefore amend the wording of this requirement so that it simply refers to restoring the land to its condition prior to the alleged breach of planning control. Once again, since this correction does not change the substance of the requirement, it can be made without any injustice.
13. Thus, I find that the enforcement notice is valid and not a nullity¹ but that corrections should be made in the interests of clarity, and that doing so would not result in injustice to either party.

The Appeal on ground (b)

14. The appeal on this ground is that the matters alleged in the notice have not occurred. The premise of the appellant's argument on this ground is that since the enforcement notice is not clear as to the precise nature of the alleged breach, it is not possible for the appellant to know, as a matter of fact, whether the breach as alleged has occurred.
15. However, I have found above that the notice enables the appellant to know with reasonable certainty the nature of the breach alleged. As such, the appeal on ground (b) fails.

The Appeal on ground (c)

16. The appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The onus is on the appellant to make their case on the balance of probabilities.
17. The thrust of the appellant's submissions on this ground are that the various works alleged by the notice would be permitted development (PD) pursuant to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).

¹ Taking into account case law in *Miller-Mead v MHLG* [1963] 2 WLR 255; *Sarodia v Redbridge LBC* [2017] EWHC 2347 (Admin); *Oates v SSCLG & Canterbury CC* [2018] EWCA Civ 2229; *Kaur v SSE & Greenwich LBC* [1989] EGCS 142; and *Payne v NAW & Caerphilly CBC* [2006] EWHC 597 (Admin)

18. The appellant submits that the open sided agricultural barn, engineering works in creating concrete slab, and engineered surfaces, along with the excavation works referred to in the notice represent PD under Schedule 2, Part 6 Class A of the GPDO (Class A). This class of PD permits works for the erection, extension, or alteration of a building; or any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit.
19. It is a pre-requisite of this class of PD that works are carried out on land forming part of an agricultural unit of 5 hectares or more in area. The appeal site itself is, I understand, some 3 hectares in size. However, the appellant produces evidence of licence agreements and a letter related to land in the wider locality seeking to demonstrate that the agricultural unit in question comprises of 5 hectares or more.
20. An 'agricultural unit' is defined in Schedule 2, Part 6, paragraph D.1 of the GPDO as 'agricultural land which is occupied as a unit for the purposes of agriculture'. Whilst I note that it is not a requirement of the legislation to assess the security of tenure of land put forward as being within an agricultural unit, in my view, this is a logical part of assessing whether the land in question is occupied as a unit, rather than being an additional limitation imposed upon this class of PD.
21. The licence agreements and letter which refers to the appellant 'renting' land as provided by the appellant, do not indicate that the appellant has exclusive possession of the land in question, and nor is there an indication as to security of tenure. I find thus as a matter of fact and degree and on the evidence before me that the land referenced in the licence agreements and letter does not fall within an agricultural unit with the appeal site. I acknowledge that the Council previously sought to verify the size of the agricultural unit but it is plain that those investigations did not produce evidence to the Council's satisfaction.
22. Thus, I find that the agricultural barn, engineering works in creating concrete slab, and engineered surfaces, along with the excavation works are not permitted development under Class A. I note that a prior approval application was made in respect of the agricultural barn, but this does not alter my view as to whether it would be permitted development given my assessment above.
23. The appellant also states that the excavation and engineering works are permitted development pursuant to Schedule 2, Part 6, Class B of the GPDO (Class B). Class B relates to the carrying out on agricultural land in an agricultural unit of less than 5 hectares in area of development consisting of— (a) the extension or alteration of an agricultural building; (b) the installation of additional or replacement plant or machinery; (c) the provision, rearrangement or replacement of a sewer, main, pipe, cable or other apparatus; (d) the provision, rearrangement or replacement of a private way; (e) the provision of a hard surface; (f) the deposit of waste; or (g) certain operations in relation to fish farming.
24. My view is that Class B does not therefore provide for excavation works. As regards the engineering works alleged, paragraph B.1(b) states that development is not permitted under Class B if the external appearance of the premises would be materially affected. The engineering works, in view of their large extent and their visibility from the road, have materially affected the external appearance of the premises.

25. As to the deposit of waste, paragraph B.5(3) states that this is permitted by Class B (f) provided that (a) waste materials are not brought on to the land from elsewhere for deposit unless they are for use in works described in Class B(a), (d) or (e) and are incorporated forthwith into the building or works in question; and (b) that the height of the surface of the land will not be materially increased by the deposit. I have no detailed information before me as to what extent the height of the surface of the land has been increased by the deposit. Thus, I cannot be satisfied that this would be PD on the evidence before me.
26. The appellant submits that the concrete ramp referred to in the allegation represents a means of access to a highway which is PD pursuant to Schedule 2, Part 2, Class B of the GPDO. However, a means of access to a highway is only PD pursuant to this class of PD where required in connection with development permitted by any class of PD in Schedule 2. The means of access is required in connection with the other works alleged in the notice. However, since these works are not PD for the reasons outlined above, the means of access was not required in connection with development permitted by any class of PD in Schedule 2. Hence, the concrete access ramp is not PD on this basis.
27. Accordingly, I find that the development alleged in the notice is not PD. As planning permission has not been granted for that development, it represents a breach of planning control and accordingly, the appeal on ground (c) fails.

The Appeal on ground (g)

28. The appeal on ground (g) is that the period for compliance specified in the notice falls short of what is reasonable.
29. The notice specifies a period of 6 months but the appellant suggests that this is not reasonable and requests 12 months for compliance to enable an application to be made for retrospective planning permission. The Council in its statement states that a period of 9 months would be acceptable. My view is that a period of 9 months would strike the right balance, particularly in the light of the ongoing pandemic and given that the appellant could seek to put in place arrangements to comply with the notice while any such planning application is pending. The appeal on ground (g) therefore succeeds to this extent.

Other Matters

30. I note the appellant's concerns as to the Council's handling of matters related to this appeal, including apparently now making different arguments to those made in respect of the previous appeal on site where the enforcement notice was found to be a nullity. However, I do not have full details of the circumstances of that case in order to assess whether or why the Council's stance might have changed.

Conclusion

31. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation.

Formal Decision

32. It is directed that the enforcement notice is corrected and varied by:

- In paragraph 3: the deletion of the wording 'a building' and substitution of 'an agricultural open sided barn';
- In paragraph 5, requirement 1): deletion of the wording 'on which it has been built';
- In paragraph 5, requirement 2): after the word 'slab' insertion of the wording '(including the ramped concreted area sloping up from the entrance)';
- In paragraph 5, requirement 3): after the word 'imported' insertion of the word 'landscape';
- In paragraph 5, requirement 4): deletion of the wording 'of gentle sloping undulating grassland field, as it was at the time of the present owners purchase and its evidenced form prior to that of February 2019' and substitute 'prior to the breaches which are the subject of this notice'; and
- the deletion of '6 months' and the substitution of '9 months' as the time for compliance

33. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

V Bond
INSPECTOR