The Planning Inspectorate

Appeal Decision

Site Visit made on 25 June 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2021

Appeal Ref: APP/B1550/C/19/3227438
Trixies Stud, Beeches Road, Rawreth, WICKFORD SS11 8TJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ('the Act'). The appeal is made by Mr Steven Watts against an enforcement notice issued by Rochford District Council.
- The notice was issued on 18 March 2019.
- The breach of planning control as alleged in the notice is without planning permission:
  1. The creation of a bund comprising waste material (trommel fines) to a height of approximately 2m and a length of approximately 63m to the North West and approximately 90m to the North East boundary (as shown hatched on the attached plan).
  2. The raising of land levels by deposition of waste material (trommel fines) on the land to a depth of approximately 0.5m, over an area measuring approximately 56 metres x 73 metres. (Shown cross hatched on the attached plan).
- The requirements of the notice are to:
  1. Remove the bund described in item 1 of the Notice (shown hatched on the attached plan).
  2. Remove the raised land level described in item 2 of the Notice (shown cross hatched [sic] the attached plan)
  3. As a result of carrying out Steps 1 and 2, remove all the materials from the site.
  4. Return the land to the condition it was prior to the planning breach occurring.
- The period for compliance with the requirements is: 4 months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (f), (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 have lapsed.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appellant initially requested that the appeal be dealt with by way of the hearing procedure on the basis that the case is complicated, with the Environment Agency involved due to the material imported. The Council, however, has agreed to the written representation procedure. Having reviewed the evidence, I am satisfied that I can proceed to determination on the basis of the evidence submitted.

3. Although the appellant initially appealed under ground (a), since the prescribed fees were not paid within the specified period, the appeal on ground (a) lapsed. I cannot therefore consider the planning merits of the works carried out.

Ground (d)

4. An appeal on ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

5. S171B(1) of the Act states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

6. Case law has established that it is for the appellant to make their case on the balance of probabilities. The main thrust of the appellant's case on this ground is that there was an existing material mound on the site that had been on the land over 8 years.

7. Earthworks at the site are asserted to have started in 2011, with arisings from works to the Cottages opposite the site deposited on an existing spoil heap. Arisings from excavations for stables, offices and bungalow foundations are also alleged to have been placed in the field near the spoil heap and arisings from the excavation of the manège construction was in place prior to Mr Watts' acquisition of Trixies Stud in July 2004. However, no details of the quantity of materials deposited have been provided.

8. An aerial photograph, dated 9 July 2013, is alleged to show a spoil heap to the northern boundary of the manège, with the spoil heap continuing on the eastern boundary. Whilst I agree it appears some material is located in the south western corner of the field, the aerial photograph shows that the majority of the field was undisturbed. An aerial photograph dated 26 June 2018, by contrast, shows a significant part of the field has been disturbed and photographs taken by the Environment Agency earlier in 2018 show the bund and land raise in situ.

9. The enforcement notice describes the waste as trommel fines, which is material which is left over the mechanical treatment of waste. The appellant does not dispute that the imported material comprises trommel fines. The appellant estimates approximately 1,600 tonnes of material was imported to the site. However, he has provided no paperwork regarding the material deposited and has no details of the individual who brought the material to site and therefore no information regarding its origin or quantity.

10. Estimates from the Environment Agency suggest there are approximately 4,576 tonnes of waste on site. Although the precise tonnage will vary, depending on the density of the material and the underlying topography, given the lack of paperwork and the appellant's very limited knowledge of the source of the material, I consider the estimate provided by the Environment Agency is far more likely to be an accurate reflection of the tonnage of material imported to the site.

11. The Council issued a Planning Contravention Notice (PCN) on 15 March 2018 which the appellant responded to on 10 April 2018. The appellant states that works to construct the earth bund were commenced on 27 September 2017 and terminated in October 2017.

12. Whilst the appellant states within his response to the PCN that the earth bund was constructed using a third of materials from deposits from excavation on site, I consider this to be highly unlikely given the limited quantities of material which can be seen in the 2013 aerial photograph compared with the 2018 aerial photograph. Furthermore, photographs taken by the Environment Agency on 6 February 2018 show what appears to be a heterogenous material, including plastics, textiles, wood material and aggregates, which is characteristic of trommel fines, rather than material which has been excavated from a construction site or overburden from within the site.

13. The breach which the Council is seeking to remedy through the enforcement notice is the creation of the bund and the raising of the land comprising waste material (trommel fines). Since the waste material, the subject of the enforcement notice, was brought to site in 2017, the appellant is unable to show that the breach occurred at least four years prior to its issue and the appeal under ground (d) must fail.

Ground (f)

14. Ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. Given the requirements of the notice, which are to remove the deposited waste in its entirety, it is clear that the purpose of the notice is to remedy the breach.

15. The appellant states that he intended to remove the bund and spread the material over the whole area, which would comply with step 1 and that step 2 is excessive. Whilst the appellant’s intention was to raise land levels to approximately 400mm at its maximum height above existing ground level, Step 3 requires the materials removed in step 1 and 2 to be removed from the site. Retaining the material on the land would therefore not remedy the breach.

16. With respect to step 4, the appellant states that the condition of land was grazing land and is still grazing land. Whilst this may be true, the requirement is necessary because of the changes to the land levels.

17. The appellant suggests the cost of removing the material from site would be prohibitive and my attention has been drawn to the personal circumstances of the appellant in this regard. Whilst I acknowledge the appellant will incur cost in complying with the notice, this in itself does not mean that the steps required by the notice to be taken exceed what is necessary to remedy the breach. The requirements do not exceed what is necessary to remedy the breach and so the appeal under ground (f) must fail.

Ground (g)

18. 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 main thrust of the appellant’s case is that sufficient time would be required to raise the funds to carry out the works.

19. I recognise that the appellant may have difficulty in complying with the notice due to his current financial situation and the likely costs involved in removing

the material. However, such difficulties are not themselves sufficient reason for extending the compliance period.

20. Whilst I have some sympathy with the situation the appellant finds himself in, the waste has now been in situ for a number of years. Given the potential effect of the works on flooding off-site, the removal of the material should not be unnecessarily delayed. The material was imported to the site over a period of around a month and so I see no reason why it would not be possible for the material to be removed within the 4 months specified in the notice.

21. In light of the above, I am therefore not persuaded that the 4 month compliance period is unreasonably short and the appeal under ground(g) therefore fails.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

M Savage

INSPECTOR