
Appeal Decision

Site visit made on 18 March 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 May 2022

Appeal Ref: APP/P3420/C/21/3289045

**Junction of West Avenue and the A5011 Linley Road, Kidsgrove,
Staffordshire ST7 1TR**

- 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 Robert Coates of Robert Coates Plant Sales against an enforcement notice issued by Newcastle-Under-Lyme Borough Council.
- The enforcement notice, numbered 21/00247/207, was issued on 16 November 2021.
- The breach of planning control as alleged in the notice is, in summary, a failure to comply with condition no. 6 of planning permission ref 17/00897/FULL requiring works to be done pursuant to an approved landscaping scheme.
- The requirements of the notice are to (1) fully implement the Approved Landscaping Scheme; and (2) replace any trees or plants which within a period of five (5) years from the completion of the Development die, are removed or become seriously damaged or diseased with others of a similar size and species.
- The period for compliance with the requirements is, in respect of requirement (1), before the end of the next planting and seeding season; and, in respect of requirement (2), before the end of the planting and seeding season following the removal, serious damage or disease of an[y] trees or plants.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The enforcement notice is quashed.

Preliminary Matters

1. The address given above is taken from the notice, differing slightly from that given by the appellant on the appeal form.
2. I wrote to the parties on 24 March expressing a number of concerns about the drafting of the notice; principally that the allegation and requirements did not appear accurately to reflect the requirements of the relevant condition, and that no periods for compliance were stated as required by section 173 of the Act. The parties' responses, where given, are considered in my reasoning below.

Main Issues

3. The condition was imposed 'in the interests of visual amenity', and the effects of the landscaping of the development on the character and appearance of the area thus form the main issue for consideration in the appeal on ground (a).
4. However, the prior main issue concerns whether the notice is valid.

Reasons

5. Planning permission was granted on 9 March 2018 for a showroom for plant sales including external display area, parts trade counter, repair workshop, preparation bay, office, storage and ancillary spaces together with external hardstanding, vehicle wash and car parking. The permission was granted subject to a number of conditions.
6. Condition 2 required the development to be carried out in accordance with the approved plans 'unless superseded by other plans approved under the terms of other conditions'. One such approved plan was the Proposed Site Layout plan, rev D, indicating an extensive external display area adjoining Linley Road and annotated to say that the site was to have an open frontage here.
7. Condition 6 however required a landscaping scheme. This was to include mature tree screening for the entire length of the Linley Road frontage, along with 'any consequential amendment to the layout of the external display area'. Condition 6 was then silent as to requiring any amended layout to be provided on site, but it did require any planting, seeding or turfing comprised in the approved scheme to be carried out.
8. The plan approved under Condition 6, no. 5f, did not in the event show mature tree screening for the 'entire length' of the Linley Road frontage, as required by the relevant condition, but instead showed three external display areas, two on the Linley Road frontage and one on the corner of the site with West Avenue, interspersed with clumps of trees, and with further tree planting to be carried out surrounding the car park adjoining West Avenue. A further condition, no. 5, required the levels of the external display areas to be approved.
9. In the event the site has been substantially reconfigured from the layout shown on plan 5f, to include areas of hardstanding in some of the locations envisaged for planting (and vice versa). The proposed clump of tree planting at the point where the site tapers away from Linley Road appears capable of being carried out, but at the point further east, where another clump of trees is shown on plan 5f, the ground is now largely covered with hardstanding to form the middle of the three external display areas. Plan 5f also showed three external display areas, but on the ground they have been shifted eastwards and all three now face directly onto Linley Road.
10. The notice as issued alleges only a breach of Condition 6, and in subsequent correspondence the Council accepted that the main purpose of the condition is limited to securing the planting, seeding and turfing comprised in the approved landscaping scheme (as well as a further requirement to replace any species that die, become damaged or are removed). There is no allegation that the existing site layout or any of the hardstanding is unauthorised (whether by reason of breaching condition 2 or otherwise). However, without a requirement to remove the hardstanding it does not appear to me physically possible to successfully carry out the planting envisaged by plan 5f, especially at the point of what is now the central display area of the three that have been formed and laid to hardstanding.
11. The difficulty therefore is that it is not possible for the recipient of the notice to know quite what to do in response to it. The first requirement of the notice is to 'fully implement the approved landscaping scheme'. However, the requirement

- to implement the scheme, as a whole, is not a requirement of condition 6 which requires only those aspects relating to planting, seeding or turfing.
12. Accordingly I have considered whether the requirements of the notice could be corrected and 'cut down' in order to require only those elements. However, because the layout of the site is now different from that shown on plan 5f, it is not possible to carry out all the planting, seeding and turfing required by condition 6 without also making changes to the site layout that would (at the least) involve removing some areas of hardstanding in order to enable the required planting to be carried out. Yet there is no concomitant allegation that the hardstanding, or the site layout generally, is unauthorised.
 13. The appellant contends that the notice cannot be corrected without causing injustice, and reluctantly I agree. Whilst it might be possible to make further changes to the notice so as to require only the planting, seeding and turfing that *can* be carried out (without altering the hardstanding layout) to be done, there are several problems with this approach, not least that the notice would then potentially (and unnecessarily) have underenforced if the Council were later to seek changes to the layout (or alternatively to seek a different planting scheme alongside Linley Road that reflects the display areas as now constructed).
 14. The appellant suggests reducing the requirements so as to require only the planting to the rear of the display areas which reflects, in the appellant's view, the planting shown on plan 5f that can still be achieved without disrupting the installed pathways and hardstanding. Having regard to the original purpose of the condition, however, it appears to me that securing some planting alongside the Linley Road frontage was of particular concern to the Council.
 15. It is not possible to require the removal of the hardstanding or the provision of the site layout shown in plan 5f without extending the scope of the allegation made in the notice. As the appellant points out, the provision of hardstanding and boulders are not matters addressed by Condition 6. Condition 2 of the permission required the development to proceed in accordance with certain plans unless superseded by plans approved under other conditions. Plan 5f appears to supersede the original rev D plan in this respect, but there is no allegation that condition 2 has not been complied with. I am unable to extend the scope of the allegation here without causing injustice.
 16. It therefore appears to me necessary for the Council to consider whether it is open to them, and if so expedient, to require the layout of plan 5f to be provided or any of the existing hardstanding to be removed; and consequentially to consider what planting, seeding or turfing can or should be required as a result of their decision about that. If the existing site layout and hardstanding areas are considered acceptable, it follows that a different planting scheme from that shown on plan 5f would be needed in order to accommodate the changed layout (whether the existing scheme, as contended for by the appellant, or otherwise). This is because the two are inconsistent, especially at the point of the existing central display area.
 17. Other concerns with the notice were raised in my correspondence with the parties, including that no period for compliance was specified as required by the relevant legislation. I am satisfied that the notice is capable of correction in other respects; however, my finding overall is that the notice is invalid and incapable of correction without causing injustice to at least one of the parties to

the appeal. It follows that the notice must be quashed, and hence I do not address the grounds of appeal against it.

Conclusion

18. 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 and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended does not fall to be considered.

Formal Decision

19. The enforcement notice is quashed.

Laura Renaudon

INSPECTOR